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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1949

## No. 48

ROSETTE SORGE SAVORGNAN, PETITIONER,

*vs.*

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1949.

CERTIORARI GRANTED MAY 31, 1949.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

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No.

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ROSETTE SORGE SAVORGNAN,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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In the

# United States Circuit Court of Appeals

## For the Seventh Circuit

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## No. 9550

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ROSETTE SORGE SAVORGNAN,

*Plaintiff-Appellee,*

*vs.*

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE,

*Defendants-Appellants.*

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Appeal from the District Court of the United States for the Western District of Wisconsin.

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1 RECORD OF PROCEEDINGS IN

UNITED STATES DISTRICT COURT

for Western District of Wisconsin.

At a term of the District Court of the United States for the Western District of Wisconsin, begun and held at the City of Madison, Wisconsin, in said District, on the first Tuesday of December, A. D. 1945, and on August 26, 1926, being one of the days of said term, proceedings were had as follows:

August 26, 1946, filed Petition for Declaratory Judgment, same being a paper in the case entitled:

"Rosette Sorge Savorgnan,
*Plaintiff,*
*vs.*
"The United States of America,
*Defendant.*" } No. 1738-Civil

2 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1739) • •

## PETITION FOR DECLARATORY JUDGMENT.

(Filed August 26, 1946. Herbert C. Hale, Clerk.)

The petitioner herein, by her attorneys, George P. Ruediger and Edgar M. Alstad, respectfully shows to the Court and alleges:

1. That she is a resident of the City of La Crosse, County of La Crosse, State and Western District of Wisconsin.

2. That on the 26th day of December, 1940, the petitioner married one Alessandro Savorgnan, an Italian national, but that at no time did the petitioner renounce her American citizenship.

3. That on the 28th day of June, 1946, the Hon. T. B.

Shoemaker, Acting Commissioner of the Immigration and Naturalization Service of the United States Department of Justice, advised the petitioner, on review of her citizenship status, as follows:

"The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending administrative proceedings. She may then seek judicial review if she so chooses.'

"You are at liberty to present this entire matter to a court of law under the provisions of Section 503 of the Nationality Act of 1940. In view of all the circumstances, it is believed that this is the only means which is open to you to have your citizenship status determined authoritatively."

3 4. That in view of the Commissioner's ruling, your petitioner seeks a declaratory judgment of this Court, pursuant to Section 274d, Title 28, U. S. C. A., clarifying and determining her citizenship status.

Wherefore, petitioner prays that this Court enter an order declaring that she is an American citizen.

Edgar M. Alstad,
*Attorney for Petitioner,*
356 Lakewood Blvd.,
Madison 4, Wisconsin.

4 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

## ANSWER.

(Filed October 23, 1946. Herbert C. Hale, Clerk.)

Now comes the defendant herein, United States of America, by its attorney of record, Charles H. Cashin, United States Attorney for the Western District of Wisconsin, and for answer to the petition for Declaratory Judgment filed herein says:

1. It possesses no information sufficient to form a belief that petitioner is a resident of the City of La Crosse, County of La Crosse, State and Western District of Wisconsin.

2. It possesses no information sufficient to form a belief that on the 26th day of December, 1940, the petitioner married one Alessandro Savorgnan, an Italian national, or that the petitioner at no time renounced her American citizenship.

3. It possesses no information sufficient to form a belief that on June 28, 1946, the Acting Commissioner of the Immigration and Naturalization Service of the United States advised the petitioner as stated in paragraph 3 of the petition.

And as a further answer to the petition, defendant says, in the alternative:

4. This Court has no jurisdiction of this action, whether it is brought under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) or under the Federal Declaratory Judgment Act (28 U.S.C. 400), in that the defendant, the United States of America, has not consented to be sued under either of said Acts; or

5 5. The appropriate statute under which this petition should be brought to clarify petitioner's citizenship status is Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) rather than the Federal Declaratory Judgment Act (28 U.S.C. 400).

Wherefore, defendant prays that this Court dismiss this petition for a declaratory judgment.

Charles H. Cashin,
*United States Attorney,*
Western District of Wisconsin.

6 • • (Caption—1738) • •

November 21, 1946.

Appearances: Mr. Edgar M. Alstad, Attorney for the Plaintiff. Mr. Charles H. Cashin and Robert Bablitch, Attys. for Defendant.

The Plaintiff's motion to amend the petition in the above entitled proceeding, by adding thereto as parties defendant, the Attorney General of the United States and the Commissioner of Immigration and Naturalization, is granted.

It Is Hereby Ordered, that the plaintiff file and serve within five days from this date, an amended petition, and that the defendant may have thirty days within which to file and serve its answer to said amended petition.

7 In the District Court of the United States of America.

• • (Caption—1738) • •

## AMENDED PETITION FOR DECLARATORY JUDGMENT.

(Filed Nov. 25, 1946. Herbert C. Hale, Clerk.)

The petitioner herein, by her attorneys, George P. Ruediger and Edgar M. Alstad, respectfully shows to the Court and alleges:

1. That she was born at Reedsburg, Wisconsin, on 2 May, 1915, and that her parents, Albert O. Sorge and Lucinda Wheeler Sorge were native born Americans. That from the time of her birth until July 1941 she resided continuously in the United States and that she was then and is now and was at all times mentioned herein a citizen of the United States.

2. That on the 26th day of December, 1940, the petitioner married one Alessandro Savorgnan, an Italian national, but that at no time did the petitioner renounce her American citizenship.

3. That in July of 1941 she went to Italy and due to subsequent war conditions and reasons beyond her control

she was compelled to reside in Italy until termination of hostilities.

4. That she applied to the American Consulate at Rome, Italy for registration as an American citizen, and on January 24, 1945 was advised by Linton Crook, American Vice Consul that her application had been approved by the Department of State at Washington, D. C.

8 5. That due to the serious illness of her mother, she was unable to await the issuance of an American passport, and entered the United States at Boston, Massachusetts, on an Italian Diplomatic Passport, on November 1, 1945.

6. That she then applied to the Commissioner of the Immigration and Naturalization Service for clarification of her citizenship status, and on the 28th day of June, 1946, the Hon. T. B. Shoemaker, Acting Commissioner of said Service advised the petitioner as follows:

"The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending administrative proceedings. She may then seek judicial review if she so chooses.'

"You are at liberty to present this entire matter to a court of law under the provisions of Section 503 of the Nationality Act of 1940. In view of all the circumstances, it is believed that this is the only means which is open to you to have your citizenship status determined authoritatively."

Wherefore, petitioner prays that this Court enter an order declaring that she is an American citizen.

Edgar M. Alstad,
*Attorney for Petitioner*,
356 Lakewood Blvd.,
Madison 4, Wisconsin.

10 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—1738) * *

## ANSWER TO AMENDED PETITION FOR DECLARATORY JUDGMENT.

(Filed Jan. 27, 1947. Herbert C. Hale, Clerk.)

Now comes the defendants herein by their attorney of record, Charles H. Cashin, United States Attorney for the Western District of Wisconsin, and for answer to the amended petition state:

1. Admit that on May 2, 1915 petitioner was born at Reedsburg, Wisconsin, and that her parents, Albert O. Sorge and Lucinda Wheeler Sorge, were native born Americans, and that from the time of her birth until July, 1941 she resided continuously in the United States. Deny that petitioner is a citizen of the United States but in that behalf state that she is a national and citizen of Italy, as hereinafter alleged.

2. Admit that on the 26th day of December, 1940 petitioner married one Alessandro Savorgnan, an Italian citizen and national, but deny that at no time did she renounce her American citizenship. In that behalf defendants allege that in order to marry said Alessandro Savorgnan, who was then serving as Italian Vice Consul at St. Louis, Missouri, it was necessary for petitioner to become an Italian subject. That on March 28, 1940 petitioner, under the name of Rosette Andrus Sorge, her maiden name, applied for Italian citizenship, and by Royal Decree of August 25, 1940 such citizenship was granted to her. Thereafter, on November 23, 1940, she formally renounced her American citizenship and took the oath of allegiance to the King
11 of Italy before an Italian consular officer at Chicago, Illinois.

3. Admit that in July of 1941 petitioner went to Italy but deny that her stay in that country was due to conditions beyond her control. In that behalf defendants allege that she voluntarily stayed in Italy until on or about the 1st day of November, 1945, at which time she was permitted to enter the United States for a temporary stay on a foreign visitor's visa.

4. They possess no information sufficient to form a belief that petitioner applied to the American consulate at Rome, Italy for registration as an American citizen and on January 24, 1945 was advised by the American Vice Consul that her application had been approved by the Department of State at Washington, D. C.

5. Admit that petitioner applied to the Commissioner of the Immigration and Naturalization Service for classification of her citizenship status and on the 28th day of June, 1946 was advised by the Honorable T. B. Shoemaker, Acting Commissioner of said Service, as set forth in paragraph 6 of her petition.

6. Deny all matters not herein specifically denied.

As a further answer to the petition defendant United States of America says:

This Court has no jurisdiction of this action as to the defendant, United States of America, whether it is brought under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) or under the Federal Declaratory Judgment Act (28 U.S.C. 400), in that such defendant has not consented to be sued under either of said Acts.

Wherefore, defendant prays that this Court dismiss this petition with costs.

Charles H. Cashin,
*United States Attorney for the Western District of Wisconsin.*

12 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—1738) * *

## TRANSCRIPT OF PROCEEDINGS

(Filed Jan. 13, 1947. Herbert C. Hale, Clerk.)

14 had and evidence offered on the hearing of the above-entitled cause, in said Court, sitting in the City of Wausau, in said Western District and State of Wisconsin, the Honorable Patrick T. Stone, Judge, presiding; said cause having come on for partial hearing on Friday, the 3rd day of January, 1947, at the hour of two o'clock in the afternoon.

Appearances:

Mr. Edgar M. Alstad, on behalf of the plaintiff.

Mr. Robert A. Babiitch, Assistant United States Attorney, on behalf of the defendant.

15 Mr. Alstad: May it please the Court:

We have stipulated here that we may take some testimony today, because the witnesses will be unavailable at a later date.

The Court: I suppose it may be stipulated that the testimony on behalf of the plaintiff may be taken now, before issue, and used by the Court with full force and effect, as if taken after issue?

Mr. Bablitch: Yes, your Honor. I think, however, there should be this qualification, in fairness to the Government:

We have agreed to have the testimony of the witnesses taken in this manner, because of the fact that, as I understand it, both the petitioner and her husband, who is also here, are leaving the country very shortly; but I do believe it should be a condition of the stipulation that the testimony can only be used in case petitioner's counsel presents an affidavit at the time of the trial that either or both of the witnesses are still out of the country.

The Court: That is all right.

Mr. Alstad: That is correct.

The Court: That is fair and reasonable. It may be so stipulated.

16 ROSETTE SORGE SAVORGNAN, the plaintiff, called as a witness in her own behalf, and having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Alstad.*

Q. Mrs. Savorgnan, what is your full name?
A. Rosette Sorge Savorgnan.
Q. Where were you born?
A. In Reedsburg, Wisconsin; May 2nd. 1915.
Q. Where did you reside after you were born?
A. I resided in Reedsburg until I was nine, and then in La Crosse until I was eighteen, and then in Milwaukee, and St. Louis, Missouri.
Q. And you are the plaintiff in this action?
A. Yes.
Q. And are you married?
A. I am.
Q. When did you become married?
A. I became married on December 26th, 1940.
The Court: Q. 1940?
A. 1940.
Mr. Alstad: Q. And whom did you marry?
A. I married Alessandro Savorgnan.
Q. And was he an American citizen?
17 A. No, he was an Italian citizen.
Q. And he was employed by the Italian Diplomatic Service?
A. That is right.
Q. At the time of your marriage, did you sign any papers?
A. Yes, I signed a document written in Italian.
Q. Where was that paper signed?
A. That was signed before the Italian Consul General in Chicago.
The Court: Q. Where were you married?
A. I was married in Waukon, Iowa, by a Justice of the Peace.
Q. In Iowa?
A. Iowa, yes.
Mr. Alstad: Q. Did you understand Italian at that time?
A. No, I did not. I did not speak or read Italian.

Q. Did your husband explain to you that signing that paper might endanger your American citizenship?

A. No. He merely told me that it was an acquisition of Italian citizenship in order to marry an official of the Italian Foreign Service.

Q. Would you have signed that paper if you thought that you would lose your American citizen-
18 ship?

A. No.

Q. Did your husband at any time advise you that you were not endangering your American citizenship?

A. My husband had been informed previously that I would not in any way endanger my American citizenship by signing such a document.

Q. Did you appear before any American officials and sign any documents or make any statements?

A. Never.

Q. Did you ever leave the United States?

A. Previously?

Q. After your marriage?

A. Yes, after my marriage. Six months after my marriage I followed my husband on his mission.

Q. What were the facts surrounding your husband's departure from America?

A. In 1941, when they closed the Italian consulates in this country, my husband was sent back to Italy.

Q. And you accompanied him to Italy?

A. I accompanied him to Italy.

Q. Was it your intention to establish a permanent residence abroad?

A. No, never.

19 Q. How long did you stay in Italy?

A. I stayed in Italy during the duration of the war.

Q. Were you able to leave Italy prior to the time that you actually did?

A. Never. I tried—I tried with the Swiss authorities to find some way—it was the only agency to whom I could go—and I could not get through, because they had all—they could not help anybody over there at that time.

Q. As soon as the war was over, did you make application for an American passport?

A. Immediately. I tried first with the Swiss authorities, who were the only persons to whom we could go; I made application for my American passport, but it was

very difficult, transportation and all was difficult, they didn't communicate very well with the United States, so, when—as soon as the American consulate was established in Rome, I went there, the very first days, and went to the consulate and made application for my American passport.

Q. What did the State Department advise you as to your application?

A. Several weeks, or, months later, I think it was a question of a couple of months, the consulate in Rome, the American consulate at Rome informed me that the
20 State Department had said that my application for my American passport had been approved.

Q. Did you receive a message at that time that your mother was ill?

A. No, not at that time. They told me at that time that my passport could not be given until I had evidence of transportation to come back to this country; and shortly after this I had word that my mother was very ill, and I went to them for my passport, but in the meantime they said that they had had a change of opinion, a change of something which I never understood, and they said that they could not issue the passport.

Q. You then obtained—

A. When my mother was dying, they suggested that the fastest thing for me to do, because they must communicate again with the United States, which took maybe days, my mother was dying, they suggested that I use my Italian diplomatic passport to come across, which would facilitate the thing greatly. And that is what I did. My mother died before I arrived in the United States.

Q. You then obtained that Italian diplomatic passport in order to return to the United States to see your mother before her death?

A. That is right.

21 Q. Were you at any time employed by a foreign government?

A. No foreign government. By the United States government.

The Court: Q. What is tha ?

A. I was employed—when the American troops came into Rome, I worked for the Americans, for the Allied Commission in Italy.

Q. Were you employed at the time of your marriage?

A. I beg your pardon?

Q. Were you employed at the time of your marriage?

A. No, no. That was in Rome.

Q. No, but I am asking that also: Were you employed here in this country at the time of your marriage?

A. Oh, no, no.

Mr. Alstad: Q. On your return to America, you then applied to the Immigration Officer for a clarification of your status?

A. That is right.

Q. And he advised you that the thing was in such condition that it should be decided upon by a Court?

A. Yes, the definite decision should come from the Court, because it was on a level, they explained, that the State Department could not make the decision that
22 would be a final decision; the decision should come from the Court.

Q. When you signed that paper before the Italian consulate, you merely thought that was a formality required for your marriage?

A. Absolutely.

Mr. Alstad: That's all.

*Cross-Examination by Mr. Bablitch.*

Q. What was your mother's maiden name?

A. Lucinda Wheeler.

Q. And your father's full name?

A. Albert Owen Sorge.

Q. And what was their ancestry?

A. They were both American.

Q. And were they born in this country?

A. Yes, both, near Reedsburg.

Q. Where did their forefathers come from?

A. My mother's came from some place in the British Isles—her mother was also born in this country, however, my grandmother was born in this country. And my grandfather on my father's side came from Germany.

Q. And what does your education consist of?

23 A. I have a Bachelor of Science degree, and I took all my education in this country. I went to school in Wisconsin, and was graduated from Milwaukee Downer College.

Q. Did you take any foreign languages at school?

A. No—I took Latin in high school.

Q. You took Latin in high school?

A. In high school—which was required.

Q. When did you become acquainted with your present husband?

A. When I was in St. Louis in 1939.

Q. And how did that acquaintanceship arise?

A. My husband was living in the same—well, we met through friends from Reedsburg, and we had common friends, and he knew them, and we ran on to them on the street, and they introduced us.

Q. Was he in the Italian consular service at that time?

A. Yes, he was.

Q. And did he speak English at that time?

A. Yes.

Q. Fluently?

A. Yes.

Q. Did anyone tell you that it was necessary for you to sign this paper that we have been talking about at Chi-
24 cago, in order to marry your husband?

A. No. At the time I signed it, I was told that it was just a formality in order to acquire this citizenship in order to marry my husband; but I had been told that it would in no way endanger my American citizenship.

Q. Who told you that?

A. My husband.

Q. Was that the first paper that you signed with reference to the question as to your citizenship involved in your marriage, the one at Chicago?

A. Yes—no, let me think. The one I signed in Chicago? I think there was an application signed previous to that. I don't remember.

Q. And do you know when that application was signed?

A. Well, some months before.

The Court: Q. Application for what?

A. For Italian citizenship.

Q. You did sign an application?

A. Well, I think that is what it is. It was in Italian, and I did not understand it at the time.

Q. You are speaking now about the document you signed at the time of your marriage?

Mr. Bablitch: No. She is speaking of a different document, your Honor.

25 The Court: No.

Mr. Bablitch: Q. And you say that document was in Italian?

A. In Italian.

Q. Do you understand Italian now?
A. Now, I do.
Q. Do you read Italian?
A. Yes.
Q. And do you know how it happened that you signed that application that you speak of, for Italian citizenship?
A. Only the circumstances that I say. I signed it in order to be able to marry my husband.
Q. You were married in December, 1940?
A. In December of 1940.
Q. Did you become engaged before your marriage?
A. No.
Q. When did you contemplate marriage for the first time?
A. Oh, about—almost a year previous.
Q. You never became formally engaged, however?
A. No, never.
Mr. Bablitch: I ask that this be marked for identification as Government Exhibit No. 1.
26 (Document produced by counsel is marked exhibit 1 for identification, as requested.)
Mr. Bablitch: Q. I show you what has been marked for identification as Government's exhibit No. 1, which purports to be an application by you, in the Italian language, for Italian citizenship.
Will you read that, please—to yourself, first.
(Witness examines exhibit.)
A. Yes, I have read it.
Q. Can you state whether or not that exhibit that you have in your hand is an identical copy of an application which you signed for Italian citizenship?
A. No.
Q. It is not?
A. I don't remember.
Q. You don't remember?
A. No.
Q. Can you read that application for the benefit of the Court and us?
A. Do you mean in Italian?
Q. In English.
A. Well, it is rather technical, as I find it, even
27 with my knowledge of Italian now, I don't know if I can translate it too well—I will try.
Q. If you will, do the best you can, please?

A. Yes.

"The undersigned Miss Rosette Andrus Sorge, of Albert O., born at Reedsburg, in the State of Wisconsin, United States, the 2nd of May, 1915, resident in St. Louis, State of Missouri, citizen of United States of America, with the present"—

I don't know how to translate one part here, "fa istanza"—I think it means—

"asks that Italian citizenship be given under the sense of Article 4 of the Law No. 13 of June, 1912, No. 535, as modified under Article 1 of Royal"—

I guess it must mean—

"law of the 1st of December, 1934, No. 1997, and that it becomes"—

There is something here I don't understand. It is too technical for me—"it becomes"—I can't really read it—something under the last article.

Q. It refers to an Italian law, does it not?

A. Yes, to an Italian law, that's right.

Q. Yes.

28 A. And it is signed "Rosette Andrus Sorge, St. Louis, Missouri, 28 March, 1940."

Q. Now, a paper of that same tenor, or general tenor was signed by you on March 23rd, 1940, is that correct?

A. March 28th, it says here.

Q. March 28th; and that was signed at St. Louis?

A. Apparently, yes, because my address is here. This part I do not remember (indicating).

Q. You recall signing a paper of similar nature, do you not?

A. I remember signing something—

The Court: Q. Whom was it signed before?

A. Nobody.

Mr. Alstad: It was signed before the Italian consulate.

The Witness: No.

Mr. Bablitch: Q. Is there anything on that exhibit to indicate before whom it was signed?

A. No, there is nothing; just my address here, in the Coronado Hotel, where I lived.

Q. Yes, and whom is it addressed to, please?

A. It is addressed to nobody. It says:

"The Royal Ministry of Foreign Affairs in Rome."

I mean it is not addressed to anybody. It is for

29 their file, apparently.

Q. Now, how did it happen that you signed a paper of that general nature on March 28th, 1940?

A. In order—I was told that my husband, being an official of the foreign service, could not marry a person who did not have an Italian citizenship; and so this, apparently, from the reading of it, is an application to acquire that Italian citizenship. But I never, never in any way thought it would ever endanger my American citizenship.

Q. Who presented that paper to you?

A. It must be my husband.

Q. Do you know who composed it?

A. No.

Q. Do you recall who incorporated that information in there, relative to the maiden name of your father, or your birth date, I believe that is given in there?

A. No, I don't know.

Q. You don't recall giving that information to anyone?

A. Apparently it must have been to my husband, because I would have recalled giving it to someone else. He knows my mother's name.

Q. How many years of Latin did you have?

A. I had two years, I believe.

30 The Court: Q. When did you finish high school?

A. In 1933.

Q. And you were married in 1940?

A. I was married in 1940.

Q. So the little Latin you learned in high school wasn't of any value to you?

A. I remember nothing of my Latin today. I can't even understand Latin.

Mr. Bablitch: Q. Did you read that application at the time you signed it?

A. No. It was in Italian. I couldn't have understood it.

Q. Did anybody explain the nature of what you were signing?

A. Only what I have told you now: That it was a formality in order to be able to marry my husband.

Q. Did anyone ever tell you that it was necessary for Italian consular officers—strike that.

Did anyone ever tell you that in order to marry an Italian consular officer, it was necessary for you to renounce your American citizenship?

A. No, no.

Mr. Alstad: There is nothing there about renouncing American citizenship. I object to that, your Honor.

31 This was an acquisition of Italian citizenship.

The Court: Q. Was that application that you have identified as an exhibit, and the other, both signed before you were married?

A. Yes.

Q. Did you take any steps after the signing of that application, to become an Italian citizen?

A. No, none whatsoever.

Q. You didn't appear before any Court officer?

A. No, never.

Mr. Bablitch: Q. Now, after that application was signed, do you know to whom it was submitted?

A. No.

Q. Do you know whether or not you were granted Italian citizenship in the summer of 1940, by royal decree?

A. I don't believe—no. It could not be.

Q. If we were to tell you that on August 25th, 1940, by royal decree you were granted Italian citizenship, would this be the first time you heard that?

A. That in August of—

Q. On August 25th, 1940, you were granted Italian citizenship by royal decree?

A. Well, I don't remember.

Q. Well, did anyone ever advise you that you had

32 been granted Italian citizenship by royal decree?

A. Shortly before I was married, a few days before I was married, we were—I was notified by phone that the consent to marry my husband had been given. That's all I know, that's all I ever heard. Now, the steps that have preceded that, I do not know what they were.

Q. And who telephoned you?

A. The telephone call came from the Italian Consulate in Chicago, where this had taken place.

Q. Where were you at that time?

A. I was in La Crosse.

Q. And where was your husband stationed?

A. In St. Louis.

Q. And what was the nature of the telephone call?

A. Merely a communication—it was even in Italian—I understood very little of it.

Q. And what was the nature of it?

A. Well, the nature was a telephone call, saying that this permission that had been—which for one year my husband had been trying to procure, had finally come through.

Q. Were you ever—were you advised to follow that up with anything?

A. Never.

33 Q. How did it happen that you signed this paper in Chicago shortly before your marriage, that you have spoken about, that has not yet been identified?

A. Well, that was part of this procedure.

Q. Well, who advised you to sign a paper in Chicago shortly before your marriage?

A. My husband.

Q. And where were you then?

A. I was—where was I residing?

Q. Yes.

A. At that time I was residing, I think, in La Crosse.

Q. And where was your husband stationed?

A. St. Louis, Missouri.

Q. And who made arrangements for you to go to Chicago?

A. My husband.

Q. And you met him there?

A. Yes.

Q. Did he tell you why he wanted you to go to Chicago?

A. Well, I don't remember.

Q. Well, what did you do when you got to Chicago?

A. I was taken to the Italian Consulate, where he also had work and friends; and I was taken into a room and given this paper, a piece of paper to sign, which was written in Italian, and which I did not understand.

34 Q. Did you look the paper over?

A. I looked at it, but I didn't understand it.

Q. Did your husband, or anyone, explain to you the content of that paper?

A. No.

Q. Do you now know what the content of that paper was?

A. Now that I read Italian, I understand it.

Q. Have you seen the paper since you have acquired a reading knowledge of Italian?

A. No—I think a copy, a translation, if I am not mistaken, which was in a file some place.

Q. You have seen a translation of it, however?

A. I believe I have seen the translation.

Q. How long were you at the Italian Consulate in Chicago on the day that we are speaking about, when you signed this paper? Were you there very long?

A. No.

Q. Were you asked to raise your hand, or anything, in connection with a ceremony there?

A. No.

Q. All you did was signed a paper?

A. I signed a paper.

Q. Were there any witnesses to it?

A. I believe there were people I knew in the consulate, I knew many of them.

Q. And nobody explained to you at that time what the nature of the paper was?

A. No.

Mr. Bublitch: Mark this, please.

(Document produced by counsel is marked exhibit 2 for identification, as requested.)

Mr. Bublitch: Q. I show you what has been marked for identification as Government's exhibit No. 2, and ask you to read that document, if you will, please?

A. It is a translation:

"Royal Consulate General of Italy
"Victor Emannuel III
"By the Grace of God and the will of the Nation
"King of Italy and Albania
"Emperor of Ethiopia

"On this day November 23rd 1940, 19th of the Fascist Era, in the Chancery of this Royal Consulate General in this post, Miss Rosetta Andrus Sorge, daughter of Lucinda E. Wheeler and Alberto O. Sorge, born in Reedsburg, Wisconsin, the second of May, 1915, to whom in virtue of Article 4 of the law of June 13, 1912 #555 modified by article 1 of the Royal Decree Law of the first of December 1934 #1997, is conceded the Italian citizenship with the Royal Decree law of August 23 1940 XVIII, registered in the Corte dei Conti on September 26 the u.s., came before us, Commissioner Riccardo Moscati, Royal Consul General in this post, invested with the functions of Civil status official

"The person in question, having been requested to take an oath as prescribed by article 5 of the aforementioned

law, as prescribed in article 5 of the Royal Decree 2d of August 1912, #949 pronounced the following words:

"'I, Rosetta Andrus Sorge, born an American citizen, declare I renounce and in truth do renounce my American citizenship, and swear to be faithful to His Majesty the King of Italy and Albania, Emperor of Ethiopia, to his royal successors, and to loyally observe the statutes and other laws of the Kingdom of Italy.'

"Present were as witnesses Mr. Giuseppe Dall'Agnel fu Antonio age 58, native of Molvena Province of Vicenza, Royal Chancelor attached to this Royal Consulate General, and the Lawyer Edoardo a Fiori di Giovanni, age 41, native of San Vito, Cadore, Province di Belluno, Legal at-
37 tache of this Royal Consulate General.

"And we, Royal Consulate General, have written in 5 copies, the present document that comes from us, Miss Rosetta Andrus Sorge and the undersigned witnesses.

"(Signed) Rosetta Andrus Sorge
G. Dall'Agnol
Eduardo A. Fiori

"R. Moscato
"(Seal of the Royal
Italian Consulate
Chicago)"

Q. You now know that that is a translation of the document that you signed in Chicago in November, 1940?

A. Yes.

Q. Do you not?

The Court: That isn't a translation of the document that she signed, is it?

Mr. Babiitch: Yes.

The Court: No. This is the granting of citizenship, isn't it?

The Witness: That is the granting of citizenship. That (indicating) is the document.

Q. Here (indicating) is the application that you said you signed in Chicago?

A. Yes, that's right.

38 Q. Do you ever remember of signing the document that was just read?

A. No, I didn't recite that. The first time I have recited it is right now.

Q. What is that?

A. I have never recited that before.

Q. Did you ever see that before, anything like that?

A. No; it is a translation, and anything I saw previous was in Italian, and I couldn't speak Italian, so I couldn't have recited it.

Q. How old are you?

A. I am 31.

Q. How old were you when you were married?

A. 26.

Q. How old was your husband at that time?

A. I believe—33, I believe.

Q. Could he talk English fluently?

A. Quite fluently.

Mr. Bablitch: Q. Well, now, isn't it true that, on the day that this document is dated, you did take an oath of Italian allegiance?

A. Well, do you mean this I just read (indicating)?

Q. Yes.

A. Well, I didn't say anything—I mean, this is a
39 translation. I couldn't have said that.

Q. Didn't you sign some document?

A. I signed something, it must have been this thing that I signed, but I don't know what it was. It was in Italian.

Q. Yes.

Mr. Bablitch: Her name doesn't appear here, your Honor, but our information is she did so sign. We have not been able to get the original, as yet.

Q. So, even after this transaction in Chicago that we have been speaking about, and after the marriage to your husband, which occurred shortly after, in Iowa, it is your position that you did not know that you might have lost your American citizenship?

A. Absolutely.

Q. It was your position that you still were an American citizen?

A. Absolutely.

Q. And had in no way acquired Italian citizenship?

A. No. I thought I realized that I acquired Italian citizenship, or my husband could not have married me, had I not had an Italian citizenship.

Q. Who told you your husband could not have married you unless you acquired Italian citizenship?

40 A. He did.

Q. Did he explain that further, that it might have

been difficult for him to secure permission to marry you without your acquiring Italian citizenship, but such permission could have been obtained in some cases?

A. Well, that was the general explanation. There were no details given.

Q. Yes, but isn't it a fact that he did explain to you that it wasn't absolutely necessary for you to secure Italian citizenship in order to marry him, but it would expedite matters? Didn't he explain that?

A. No.

Q. Well, did he say that the only way you could possibly marry him was to secure Italian citizenship?

A. That's right.

Q. And you remained in this country until July of 1941, after your marriage to your husband?

A. That's right.

Q. And after his and your marriage, where were you stationed?

A. In St. Louis.

Q. All the time?

A. In St. Louis.

Q. Now, did anyone advise you to write the State
41 Department in Washington, or any other agency of the United States Government, relative to possible Italian citizenship?

A. No.

Q. Did you ever so write any agency of the government?

A. No.

Q. While you were in this country after your marriage?

A. Absolutely never.

Q. You had no communication of any kind with the State Department—

A. None.

Q. (Continuing) —or any other department of the government?

Mark this, please.

(Document produced by counsel is marked exhibit 3 for identification, as requested.)

The Court: Q. Did you ever vote in this country?

A. Pardon?

Q. Did you ever vote in this country, at any election?

A. Yes.

Q. Did you ever vote in Italy at any election?

A. Never.

Q. Did you ever take part in any election over there?

42 A. Never, nothing.

Mr. Bablitch: Q. I show you what has been marked as Government's Exhibit No. 3, which purports to be a—

The Court: Let me ask one more question.

Mr. Bablitch: Yes?

The Court: Q. After your marriage, did you vote in this country?

A. There was no—after I was married, there was no chance to vote. I was married in December, and I left in July.

Mr. Alstad: Q. But you are a registered voter in Wisconsin?

A. I am a registered voter in Wisconsin.

The Court: Q. Where?

A. In La Crosse.

The Court: All right. Go ahead.

Mr. Bablitch: Q. I show you what has been marked as Government's Exhibit No. 3, which purports to be a notification on government form to the Secretary of State's office, notifying that branch of the government of a change in official status; and ask whether or not your name appears on the inside page of that exhibit?

(Witness examines document.)

Q. Well, is that your signature, on the inner page

43 (indicating)?

A. That's my signature.

Q. You signed that document?

A. I signed this document. I don't remember signing it.

Q. That document is in English?

A. This document is in English.

Q. And on that document, in answer to a question: "Present nationality," your nationality is stated as: "Italian." Is that correct?

A. That's right. It is written here.

Q. And that document purports to have been dated on February 5th, 1941, shortly after your marriage, is that right?

A. I had acquired Italian citizenship.

Q. Who asked you to sign this document?

A. I remember nothing about this document.

The Court: Q. What is that?

A. I do not remember when or under what circum-

stances I signed this document. It is not at all familiar to me.

Mr. Bablitch: Q. Do you know where the photograph attached to that document, of yourself, was secured?

44 A. That's a photograph that was taken—it is a family photograph, it is taken by a photographer—it is apparently a thing that has been reduced.

Q. Do you have any independent recollection whatsoever of the circumstances surrounding your signing of this document?

A. No.

Q. I assume that you are in the habit of reading any documents written in the English language that are presented to you for signature, are you not?

A. I am, now.

Q. Well, you were then, at the time that document was signed?

A. I hadn't signed very many documents. I don't remember.

Q. Isn't it a fact that the reason you signed that document and submitted it to the State Department is because your husband advised you that you had obtained Italian citizenship, and it was necessary, and required by the United States Government, to file such a form with Washington?

A. Apparently so. My husband apparently filed this very document, because I didn't.

Q. Yes, but when you signed that document, isn't it

45 true that you were advised by him that the United States Government required that, where a person changed his citizenship, it was necessary that the government, the Secretary of State's Office, be so notified?

A. Absolutely not.

Q. It is not your position here, is it, that that document, when you signed it, was in blank?

A. Why, I wouldn't make such a statement, because I don't remember this. Truthfully, I do not remember this. The signature looks like my signature, that I can say; and the photograph is mine. But I did not file it; I do not remember the circumstances under which it was filed.

Q. And you don't even remember who presented it to you?

A. No.

Q. When did you leave this country?

A. In July of 1941.

Q. Do you recall the date?

A. Not exactly. It was around the middle of July, I do believe.

Q. And were you working after your marriage, until your departure from this country?

A. Working? No.

Q. Do you recall when your husband received orders that it would be necessary, because of impending war
46 that he leave the country?

A. No. My husband was notified that he was going to be sent to Manchukuo, and we were given about a month's leave, to go and stay with my parents before the sailing of our ship, which was leaving from San Francisco. The other Italian consuls in the country were leaving from New York, and had made all arrangements to go.

And, enroute to my parents' home, we were in Chicago overnight, and we got a telegram from Washington, saying that orders had been changed, and we must reach that boat—

Q. What boat?

A. The boat from New York, which was leaving in the morning, and they would hold the boat; and I had to leave, I left following my husband, and that is why there was a rush.

Q. When had he received his original orders that were later countermanded, that required him to sail from San Francisco to this foreign port that you are talking about? When had he received those orders?

A. About going from San Francisco?

Q. To Manchukuo, was it?

A. To Manchukuo—oh, about, I think a month or so. I don't remember.

47 Q. A month before your departure for Europe, is that right?

A. No, no, no, he had known about it—wait, now. I mean, at that time there was such a confusion, I don't remember.

Q. Well, was there a considerable lapse of time before he received this final notice?

A. No, no. He just found out. We left immediately after we had learned it. You see, we were going to stay with my family.

Q. Yes.

A. We left immediately, after we had learned that we were going to take the boat from New York. Instead of

being ordered to take boat from New York, we were told we were going to take boat from San Francisco, and there was no time to see.

Q. Did you apply for a passport for that journey that was going to take you to Manchukuo?

A. I didn't have them—do you mean for my American passport?

Q. For any passport?

A. No, I had just learned about it. We were going to be in the country one month, we were told we would be here a month before sailing, and in that time we were
48 going to make all arrangements for passports and all other necessary arrangements.

Q. Do you have any independent knowledge when Italian consuls were advised it would be necessary for them to leave the country, or members of that service?

A. No, I don't remember. It was just at that time, in July, I think.

Q. On what boat did you sail for Italy?

A. We sailed on the West Point.

Q. On or about July 15th, 1941?

A. Yes.

Q. And on what sort of passport did you sail?

A. I think a diplomatic passport.

Q. That was an Italian passport, was it not?

A. Italian diplomatic passport.

Q. Did you make any effort to secure an American passport at that time?

A. I had no time. We were notified at eleven at night, and we had to be in New York, on the boat, the next morning early.

Q. Did you have to make an application for an Italian passport?

A. No.

Q. And when did you arrive in Italy?

49 A. I should say eight days later.

Q. And where did you take up quarters?

A. I didn't hear you.

Q. Where did you take up quarters, in what city in Italy?

A. Oh, in Rome.

Q. And did you remain in Rome until you left for the United States again?

A. Yes—no. I was in Salzburg for six months, and there—

Q. Yes.

A. And there we were interned by the German Gestapo.

Q. What position did your husband hold with the Italian government, if any, during the time after you arrived in Rome, until the time of your departure for the United States?

A. He served in his foreign ministry. I don't know what he did.

Q. Do you recall when the war broke out between the United States and Italy? Do you recall when that was?

A. Yes, it was in December. In December.

Q. Of 1941?

A. Yes.

Q. Now, before war broke out in December, 1941,
50 and after your arrival on or about July 23rd, 1941, had you made any efforts whatever to get in touch with the American consulate at Rome with reference to a clarification of your citizenship status?

A. There was no American consulate at Rome. They had been withdrawn. At the time the Italian consulates were closed here, the American consulates were closed there.

Q. Did you address a letter to the State Department in this country?

A. I went to the Swiss Legation, which was the only office which could serve Americans at that time.

Q. And when did you go there?

A. Well, before war broke out.

Q. You never directed a letter to the State Department in Washington, however, nor did you contact any American consular officer with reference to your citizenship status until 1944, is that correct?

A. There was nobody there I could contact. I did contact the Swiss.

Q. But you didn't contact them?

A. Yes, through the Swiss, yes, I tried to contact them.

Q. And what were you told at that time?

A. Well, they put this application in—they took my application for a passport, in case eventually I could
51 get out through some other channel, if some way would open up that I could go home.

Q. But you did not write to the authorities in America, did you?

A. I couldn't, there was no possible way. There was no communication between the countries.

Q. There was no way to write to the American authorities from July, 1941, until war broke out in December, 1941?

A. Well, I presume there were.

Q. Yes.

A. I went to my Swiss—I was told that the Swiss Legation handled the work of the American, that the American consulates were doing. So I went to them, through official channels, not directly.

Q. Do you know when the American army broke into Rome?

A. I do.

Q. Was that in June of 1944?

A. That's right.

Q. What, if anything, did you do with reference to your status at that time?

A. I immediately—I went—I started working for them the day after its arrival, and I worked for the Allied Commission until the day I left Italy.

And as soon as—of course, the American consulate
52 wasn't opened until many months later, and I went there the very first, I believe it was the day the consulate was opened.

Q. When was that?

A. I think it was in October.

Q. Of 1944?

A. That's right.

Q. And did you discuss your problem with anyone at that time?

A. Oh, yes, and they had had the application the Swiss had—they had found that; it had gotten back into their hands eventually.

Q. Did you sign a new application in October, 1944?

A. Yes, because at first they didn't know whether the other one that I made through the Swiss had been lost, because during the war so many letters and things had gone astray; so they suggested, to make sure, that I make a new application.

Q. That application that you made in October of 1944 was in the English language?

A. For my American passport?

Q. Yes.

A. Yes.

Q. And do you recall that certain information was
53 asked of you on that application?

A. Yes, I had to state all the facts.

Q. Do you recall, in answer to a question on that application, that you stated that you had not taken an oath of allegiance or been naturalized to a foreign nation? Do you recall that?

A. Do I recall—

Q. Do you recall that on that application, in answer to a question, you stated that you had never taken an oath of allegiance to a foreign nation?

A. No.

Q. Could you have signed such an application?

A. For this American—

Q. Yes.

A. Yes.

Q. Yes, and you do not recall at this time as to whether or not, in answer to a question on that application, you stated that you had never taken an oath to a foreign nation. You do not recall that?

A. I do not recall that. But I remember the circumstance under which it was done. It was done in quite a haste, quite a hurry. It was done in front of the official of the Swiss, or an officer of the Swiss Legation, I
54 believe, and he filled it out, and he just told me to fill out my name and address, or my name, and he would fill in the rest.

You see, there was some sort of a form; it was not as detailed as the—

Q. Well, assuming that such a question was on that blank:

"Have you ever taken an oath of allegiance to a foreign nation?"

What would your answer have been?

A. My answer would have been "no", because I didn't know at that time.

Q. Do you mean to say that—strike that.

That was in 1944, in October?

A. No, that was before. I made the application with the American—I made one to the Swiss, and one through the American.

Q. The application—maybe we don't understand each other, but the application I have been speaking about is the one made before the American consulate in October of 1944.

A. Yes.

Q. And what would your answer to such a question have been, if you understood the question?

55 A. About the oath of allegiance?

Q. Yes.

The Court: Well, what was the answer? Is there any document?

Mr. Bablitch: It so happens, your Honor, that I do not have the document; but I do have information of what it contains. The matter came on in such a hurry I couldn't secure it from the State Department.

The Court: I see.

Well, do you want to know now, if she were asked at that time if she ever took an oath of allegiance to any other country, what her answer would have been?

Mr. Bablitch: What her answer would have been, that's right.

The Court: Q. Do you recall signing any document on which that question was asked of you?

A. No, I really do not.

Q. If that question was asked of you, what would have been your answer?

A. No.

Mr. Bablitch: Now, you say your answer would have been no?

A. My answer would have been no.

Q. In October of 1944, you had been in Italy three

56 years and over?

A. Yes.

Q. And you had learned to speak the Italian language, had you?

A. Quite well, yes.

Q. Yes, and you had learned to read the Italian language?

A. Yes.

Q. And you had been living with your husband throughout that time?

A. Yes.

Q. And why would your answer have been no?

A. Well—

Mr. Alstad: Your Honor, none of these documents were available to her over in Italy, so she had no conception of what her status was. She considered herself an American all the time; and when she came back here to the United States and made application to this Immigration Officer, then she found out about all these other papers.

She had no knowledge while in Italy as to what her status was, except that she considered herself an American.

Mr. Bablitch: It is for the purpose of checking on her story, is the only reason I am asking this question, your Honor. Our file indicates that she did sign such a
57 document, and that her answer was "no", and she has so testified, that undoubtedly if the document had been presented to her, that she would have answered "no".

I am just trying to find out why she would have answered "no", at that late date, after having been subject to the Italian atmosphere for three years.

The Witness: Well, I probably—I don't know. I am a bit confused on the whole thing.

Mr. Alstad: Q. Well, you considered yourself an American at that time?

A. I considered myself an American citizen, and anything that I had signed before, I felt that it had in no way endangered my American citizenship, so if I put "no" or "yes"—

Mr. Bablitch: Q. The point of the matter is, in October of 1944 you well knew that you had signed an oath of allegiance to the Italian nation, did you not, in October of '44?

A. No.

Mr. Alstad: I object to that.

A. No, I do not know what I signed.

Mr. Alstad: She has testified she does not know what she signed.

Mr. Bablitch: Q. Do you mean to say in three years—

58 The Witness: No, we never discussed it further. I mean that was an end, that was an episode; that was past. I was living in Italy. Nobody had ever questioned me; I didn't know—it had never been brought up again. That was the end of it.

Q. During the time this country was at war with Italy, which began in December, 1941, until the time that you contacted the diplomatic services relative to your status, do you mean to say that you never considered the subject of what your status was, either in conversation with your husband or anyone else?

A. I have always considered that I was an American citizen. There was no doubt in my mind but what I had my American citizenship, none whatever.

Q. Did you ever make any attempt to get in touch with the American officials, relative to your citizenship status, after the outbreak of war with Italy, until you contacted the consular service in October of 1944?

Mr. Alstad: Your Honor, that question is unfair too, because there were no American officials there.

The Court: She has answered repeatedly that she tried to contact those that represented the American government, through the Swiss Legation.

Mr. Alstad: Yes.

59 The Court: Let me ask you this question:

Q. Where were you in Italy during the war?

A. In Rome.

Q. What was your husband doing?

A. He was working in the foreign ministry in Rome.

Q. For the Italian government?

A. Yes.

Q. What were you doing?

A. Staying home, that is, with his family.

Q. Were you working for the government?

A. No.

Q. For that government?

A. No.

Mr. Bablitch: Q. Did you communicate with your parents during this period from 1941, when you were in Italy, until your return?

A. There was no communication.

Q. You did not. Now, you state that you did make this application for an American passport in October of 1944?

A. In October, 1944.

Q. And I believe your testimony on direct examination also was to the effect that that application had been approved?

A. Yes, the State Department replied that my

60 application as an American citizen had been approved.

Q. Who advised you of that?

A. The American consulate in Rome.

Q. Do you have any record of it?

Mr. Alstad: Yes, I will introduce that in just a minute.

The Witness: Yes.

Mr. Alstad: Do you want me to introduce it now?

Mr. Bablitch: Yes, you can. I don't care.

Mr. Alstad: Will you mark this?

(Document produced by counsel is marked exhibit 4 for

identification, and is presented to the witness by Mr. Alstad.)

The Witness: (Reading.)

"American Consular Service
"American Consulate

"Rome, Italy, January 24, 1945.

"Mrs. Rosette Andrus Savorgnan,
91 Via Barnaba Oriani,
Rome.

"Madam:

"The Consulate refers to the application for registration as an American citizen which you executed on October 23, 1944, and is pleased to inform you that it has been
61 approved by the Department of State at Washington.

"Very truly yours,
"For the Consul,
"Linton Crook,
*American Vice Consul.*"

(Document is submitted to Mr. Bablitch for examination.)

Mr. Bablitch: You wanted this as an exhibit?

Mr. Alstad: Yes, that will be our exhibit.

Mr. Bablitch: Q. Counsel has shown you what is marked as exhibit 4 for identification, which is the petitioner's exhibit number 1, which purports to be a letter from the American Consulate at Rome, dated January 24, 1945, approving your application for registration as an American citizen, the application being signed on October 23, 1944.

Was such a letter of approval received by you?

A. This was received by me, yes.

Q. Yes. Was that ever countermanded in any way?

A. No.

Q. And your explanation—strike that. At least, you don't know that it was countermanded?

A. I do not know. I have this, I mean. I know nothing more.

Q. But on your application you gave no informa-
62 tion, did you, relative to your application for Italian citizenship on March 27th, 1940, the fact that such

citizenship was granted by royal decree August, 1940, and the fact that you further renounced your American citizenship at Chicago in November of 1940, did you?

A. I don't remember the questions on the questionnaire.

Q. Would you have given such information if such questions were required by the questionnaire?

A. Yes.

Q. When did you apply for a passport to come back to the United States?

A. Following this (indicating document).

Q. And when?

A. Well, immediately. I don't know when it was—well, shortly after, and that is when I was told that the passport couldn't be issued until I had evidence of transportation.

Q. And again you came back to America on an Italian passport, you say, because of the time element?

A. The time element. My mother was dying, and I couldn't wait for the communication, to straighten it out with Washington.

Q. Do you know whether or not you were required to sign an application to secure permission to travel to
63 America on an Italian passport at that time? Were you required to sign an application?

A. I don't believe so. There was a great deal of confusion, I don't even know what I was doing.

Q. Well, wasn't it necessary for you to sign an application to get an Italian passport?

A. No. I had a diplomatic passport, it was given to me—I didn't have to go even for it. It came from my husband's ministry. It is not an ordinary Italian passport.

Q. Why did you accompany your husband to Italy in July of 1940?

A. Well, to follow my husband. He was going on a mission.

Q. You didn't know how long that stay would be, did you?

A. No.

Q. So far as you were concerned, it was indefinite?

A. No. One can't tell. I was hoping I would be back very shortly.

Q. Yes, but it was for an indefinite period?

A. Why, yes. Nothing is definite in those things.

Q. You were not asked by the American government to accompany him?

A. No.

64 Q. No one asked you to; so it was purely voluntary on your part that you went back, or went over to Italy in July of 1941, isn't that right?

A. Yes.

Q. You wanted to be with your husband and reside with him?

A. I wanted to be with my husband.

Q. And as far as you were concerned, it was for an indefinite period of time?

A. Well, no, you never know.

Q. Yes. As I understand it, you plan on leaving the country shortly, now?

A. For a temporary period.

Q. And where are you going?

A. To Caracas, Venezuela.

Q. Is your husband going with you?

A. My husband is going on a mission, and I am accompanying my husband.

Q. Is your husband now employed by the Italian government?

A. He is.

Q. In what capacity?

A. In what capacity? He is going to serve as the First Secretary of the Italian Legation in Caracas, Ven-
65 ezuela.

Mr. Bablitch: I believe that's all.

*Redirect Examination by Mr. Alstad.*

Q. What have you regarded as your permanent residence?

A. My permanent residence has always been La Crosse. I have left my belongings there when I went away, and I have always—I have never severed any of these things. It has always been La Crosse.

Q. Your father resides in La Crosse?

A. My father resides in La Crosse.

Q. And you are a registered voter in La Crosse?

A. I am a registered voter in La Crosse.

Mr. Alstad: That's all.

The Court: Q. Have you ever made a formal renunciation of your nationality as a United States citizen before a diplomatic or consular officer of the United States in a foreign state?

A. Never.

Q. Have you ever renounced your citizenship that the government contends that you acquired from the Italian government?

A. No.

66 Q. Have you ever taken any formal action of any kind to renounce your alleged citizenship of the Italian government?

A. No.

The Court: That is all.

*Recross Examination by Mr. Bablitch.*

Q. You never voted in Italy, of course, did you?

A. Never.

Q. But nobody else voted in Italy during this period, did they?

A. I believe there were elections. I don't know.

Q. You don't know whether there were or not?

A. I think there were. I didn't vote.

Q. And have you voted in the United States since your return?

Possibly I shouldn't ask you that question.

Because of the question at issue, I think possibly I should withdraw that question.

The Court: I didn't hear the question.

Mr. Bablitch: I asked her whether she had voted in the United States since her return?

The Court: Q. Well, have you?

67 A. Yes.

Q. When did you vote? This last election?

A. Yes.

Mr. Bablitch: Q. This stay in America since your return has been on an Italian passport visitor's visa, is that right?

A. That's right—an Italian diplomatic passport.

The Court: Q. Now, as you are leaving this country now, and you intend to leave with your husband?

A. Yes.

Q. On what type of passport?

A. I have hoped to travel on my American passport, but—

Q. Have you made an application for an American passport?

A. Well, I didn't—I couldn't, I didn't think, until—

Q. Well, have you made an application for an American passport?

A. No.

Q. Have you made an application for any passport?

A. No, no passport, no.

Mr. Alstad: Q. The only reason that that diplomatic passport was issued to you was because the consulate over in Rome, the American consulate advised you that that was the quickest way you could get back to America?

68 A. That's right, because by the time they could consult the State Department again, and communicate with Rome—my mother was in a very serious condition; they advised me the quickest thing to do at that point was to take that Italian diplomatic passport, which would also facilitate my traveling, because, it being diplomatic, I could have a priority that you couldn't have had ordinarily.

The Court: Q. Is there anything you can think of now that hasn't been asked, which you want to state to the Court, or do you think it has all been fully covered?

A. No. I just hope the Court understands—I mean, I have always considered I have never lost my American citizenship. I have always considered La Crosse to be my home.

Q. In other words, you want the Court to understand you never intended to revoke or renounce your allegiance to this American government?

A. Absolutely, that is right, never.

Q. And you never intended to become a citizen of Italy?

A. That's right.

Q. That is what you want the Court to understand? All right, that is all.

(Witness Excused.)

69 ALESSANDRO SAVORGNAN, called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Alstad.*

Q. Will you give the Court your full name?

A. Alessandro Savorgnan.

Q. When you were contemplating marriage, did you seek any legal advice as to what the status of your wife's citizenship would be after your marriage?

A. Yes, I did.

Q. Who did you talk to?

A. I talked to some attorneys, lawyers, friends. I alked to some attorneys, some lawyer friends of mine in t. Louis.

Q. What were their names?

A. One was—I talked to several attorneys. I remember that I talked in particular to Fred G. Mansa, and Claude Delletier, who—the latter was Legal dviser of the Italian Vice Consulate in St. Louis at that ime.

Q. And these lawyers were familiar with immigration laws and citizenship matters?

0 A. Yes, they were familiar.

Q. And what, in effect, did they advise you?

A. They advised me that whatever steps would be taken y my wife in order to acquire Italian citizenship would ot affect her status as an American citizen, according to heir opinion.

Q. Did you have any other information available at hat time, which led you to believe that your wife's status ould not be affected?

A. Yes, I had some other information. The head legal man in the Italian diplomatic service ad married, years before, an American citizen. And I as sure that that person had maintained her American itizenship.

Q. In other words, this colleague of yours that married his American citizen—

A. Yes.

Q. (Continuing) —his wife did not lose her American tatus?

A. No—in spite of the fact that she undertook steps hat were similar to those that I asked my wife to undertake.

Q. And you advised your wife that whatever she was loing at that time would not affect her American status?

71 A. That is correct.

The Court: Q. Did you think that your wife at hat time could acquire and maintain a dual citizenship in oth countries?

A. Well, in fact she would have in any case, because, even if she had not taken any steps before her marriage o acquire the Italian citizenship, under the Italian laws

she would have automatically acquired the Italian citizenship by the simple fact of marrying an Italian citizen.

The Court: I see.

Mr. Alstad: Q. That is an Italian law?

A. Yes.

Q. Now, your diplomatic passports expired recently, didn't they?

A. No, not the passport. Diplomatic passports usually do not expire.

Q. Didn't you forward them to Washington for extension?

A. Yes, that is correct.

When I came to this country, I came on a diplomatic visa, granted me by the State Department. I expected at first to stay in this country about two months. At the expiration of these two months, I still had to continue my staying here; and therefore I sent my passport
72 to the Italian Embassy in Washington, in order that they would ask the State Department for an extension of my permission to reside in the country.

At that time I thought that I would send in also my wife's passport, because I believed her period had expired too.

Q. What did they advise you about your wife's passport?

A. I heard from the Italian Embassy in Washington that the State Department had not considered the application for an extension of her permit to remain in the United States, because she could stay here as long as she liked, because she was an American citizen.

*Cross-Examination by Mr. Bablitch.*

Q. Do you know who prepared this—strike that.

When did you meet your wife?

A. In January, 1940—early in January, 1940, or late in 1939, I cannot remember the exact date.

Q. And did you keep steady company with her from the outset? Did you go with her from the outset, after meeting her?

A. Well, yes. I met her, and then we saw ea
73 other very often, because we were living at the same hotel. She was living with her brother, in an apartment there.

Q. Yes, and how long did you go together before you decided you ought to get married?

The Court: Is that material? I don't think that is material.

Mr. Bablitch: Your Honor, the first application in connection with this matter was of record in March, 1943, and they start keeping company in December, 1940. There was only a three months period—

Mr. Alstad: March, 1943?

Mr. Bablitch: The first application made by the petitioner is dated in March of 1941; and according to this gentleman's testimony, they began keeping company in December of 1939, or was it '40?

The Witness: December, '39. December, '40, we were married.

Q. I see. So you had been keeping company a long time before you got married?

A. Yes, over a year.

Mr. Bablitch: Yes—well, I apologize.

The Witness: I think over a year, or nearly a year.

Mr. Bablitch: I apologize.

Q. I show you the government's Exhibit No. 1.

74 A. Yes.

Q. Which your wife testified she signed but did not understand, at St. Louis, on March 23rd, 1940.

A. Yes, that is correct.

Q. Did you ever see the original of that?

A. Yes, I did.

Q. Is that a form that anyone who wants to get Italian citizenship must fill out?

A. Well, it is and it isn't—in as much as it isn't given in a blank. But it is the usual form that one would write, and that one finds in manuals.

Q. Did you prepare that for your wife?

A. Yes, I did.

Q. She was not your wife at the time?

A. No, she wasn't my wife at the time—my future wife.

Q. Did you explain it to her?

A. No. I explained to her that it was a document that she had to sign in order to get the necessary permission for me to marry her.

Q. That was not strictly true, was it?

A. It was strictly true. It was strictly true.

Q. Isn't it true that men who were serving in the same

capacity as you were were marrying American girls, or other girls of a foreign nationality, with the permission
75 of the government of Italy, without those girls they were marrying renouncing their American citizenship or applying for Italian citizenship?

A. I don't know if I understand correctly your question. I am sorry.

Q. Maybe this will help you.

A. Yes.

Q. Do you know about the Italian decree law of October 23rd, 1925, which provided as follows:

"Officials of the diplomatic consular career are not permitted to contract marriages without previously having obtained royal consent."

A. Yes.

Q. You knew of that law?

A. Yes.

Q. You know of it now?

A. Yes, I knew of that law at that time.

Q. Yes. Now, in obtaining royal consent, there was an application by the consular officer who wanted to marry the foreign girl, wasn't there?

A. Yes, but may I say something?

Q. Surely.

A. After that law there came another regulation, having the strength of a law, saying that royal consent
76 must be denied to officers of the Italian diplomatic service—of course, I don't know the exact words; I am giving the best translation I can by heart—will be denied, that send in an application to marry girls that are not in possession of the Italian citizenship.

Q. And you say such a rule was in effect at the time that you wanted to get married?

A. Such a rule was definitely in effect.

Q. Do you know whether or not other Italian consular officers, either who married American girls or married girls of another nationality after this rule that you spoke of went into effect, acquired or got permission from the government to marry those girls, without those girls renouncing their native citizenship—in exceptional cases?

A. It isn't that the girls had to renounce their native citizenship. They had to acquire the Italian citizenship.

Q. All right.

A. And I know of persons, of colleagues of mine who

have married foreign girls, who had to be granted the Italian citizenship before, in fact, they could not apply for the royal consent unless they would state and prove that their intended wife would be or had already the Italian citizenship.

77 Q. Already had Italian citizenship?

A. Yes.

Q. After this rule went into effect you are speaking about, is that right?

A. Yes.

Q. Then it is your position that you could not marry an American girl without her acquiring Italian citizenship?

A. Yes.

Q. And still remain in the consular service, is that correct?

A. Yes, that is correct.

Q. All right. Now, while you state that you did not explain—strike that.

As I understand your testimony, you advised your wife—and she has so testified—that at the time she signed that application, it was your understanding, after contacting legal counsel, that she would not lose her American citizenship?

A. Yes, that was my understanding.

Q. Yes, but you did explain to her also, did you not, that by that application, if it were granted, she would acquire Italian citizenship, did you not?

A. Yes, I may have said so. I am not—

Q. Yes, and you explained to her, later on, at Chi-

78 cago, that the procedure that went on there was the culmination of her acquiring Italian citizenship?

A. Well, the explanation that I gave my wife all the time, since my wife was concerned at the time about—well, being an American, and so on, and I told her that I couldn't get married unless she took certain steps and so on. Her main concern was to be sure that she would remain an American citizen. That is also why I received legal counsel. And whatever explanation I gave her, I assured her—I mean, it wasn't discussed, such and such details—I mean it happened many years ago, and my memory may betray me—especially this assurance I gave her: It was my understanding, after having seeked advice from persons that I trusted, and that were supposed to know, that she would not lose her American citizenship.

Q. Yes, but you did explain to her that this process that began with the application in March, and the citizenship grant by the king of Italy in August, and then the renunciation of her citizenship at Chicago in November, all in 1940, was a process whereby she was gaining Italian citizenship; but you assured her that she still retained her American citizenship?

A. Yes.

Q. But you did tell her she was gaining Italian?

79 A. Yes.

Q. Yes. Now, when did you get your orders to depart from this government, or from this country?

A. Well, the orders to depart from this country actually came the day before I left the country. That is to say, if I am not mistaken, the orders actually to depart from the country came the day before, when I was on my way from St. Louis to La Crosse with my wife.

Q. Well, when did you know that there was going to be such an order?

A. Well, I had received an order through the Italian Embassy at Washington, or through the Consulate General in Chicago, I would say more correctly, to close the Italian Vice Consulate in St. Louis, Missouri, on the 9th—on or about, I think, the 9th of July, 1941.

At that time I did not know—when I received this notice, I did not know when I was supposed to leave. In fact, I expected to leave much later.

Q. I show you government's exhibit 2, which purports to be a grant to your wife of Italian citizenship. It does not contain her signature—at least, that copy doesn't.

Do you recall what the procedure was there, at the time she was in the consulate office with you in Chicago, in

80 November of 1941, or 1940? Just tell us generally what she went through, as far as getting that paper there, that you have.

A. All right. I told her that there were some other formalities that she should accomplish before I could finally get the permission, the consent to marry her; and she would have to sign some papers at the Consulate General in Chicago.

Q. Yes. Is that all?

A. Well, then I do not recall whether I was—at that time, she was living with her parents in La Crosse. And I was living in St. Louis. Now, I do not recall whether we

met in Chicago, or whether I went to La Crosse and then we drove to Chicago together. That I don't remember.

Q. Yes. Well, you went to Chicago there, together?

A. Yes. We were together in Chicago and she signed this document, which she had to sign, which was in the Italian language.

Q. Yes. Is there any ceremony in connection with assuming Italian citizenship?

A. Not any special ceremony.

Q. Now, just what is the ceremony?

A. There is no ceremony performed, no ceremony
81 officially.

Q. Isn't there one that was followed at the consulate in St. Louis, to which you were attached?

A. No, that is not a ceremony. In fact, technically speaking, the Italian citizenship was bestowed upon her when the decree was issued.

Q. And that decree was issued in August?

A. The decree was issued in—I don't remember the date. I mean, I haven't seen it for a long time.

Q. Yes, well, according to that document (indicating), that is the date?

A. That is correct. I mean, it is a point, whether the citizenship can be bestowed when the decree is issued, and then the person who is named in the decree has to perform certain acts, among which is an act similar to the one described here—I mean, to sign a paper.

The Court: Q. Was there any court procedure of any kind, whereby she had to go into court?

A. No.

Q. It was all done in the office?

A. In the office of the Consulate General.

Q. Did she have to do anything at all to acquire that, outside of signing that application?

82 A. No. She signed this application; it was prepared at the office, and she signed it.

Q. That's all?

A. There are no solemn formalities.

Q. Do you know how they acquire citizenship in this country? They come into a federal court—

A. Yes, I am familiar with that. We don't have that formality.

Mr. Bablitch: Q. No salute of any kind, in effect?

A. No salute of any kind.

Q. Nothing?
A. No salute of any kind.
Q. Where do the witnesses stand?
A. They were around in the room. You know—I don't know, maybe this ceremony, I have never seen it performed in the country, in Italy. The first time I have seen it performed is in the Consulate General in Chicago, and there were no formalities whatsoever.
The Court: Q. So far as you know, there was no ceremony attached?
A. I mean, they were sitting around, and that is all there is to it. I mean there were no formalities.
Q. It just went through?
A. It just went through, started to talking about
83 different things.
Q. At least there wasn't anything there—you want the Court to believe there was nothing that happened at that time that would put her on the alert, or apprise her of the fact that she was renouncing her citizenship?
A. No, there was nothing.
Q. She didn't renounce her citizenship?
A. No, because the thing was very simply performed.
Mr. Bablitch: Q. But again, as at the time of the application was written, in March, you did explain to her that she was assuming Italian citizenship, and had acquired it in August, and that this act occurred in November in Chicago was necessary, really, to fulfill her Italian citizenship that had been granted her in August, is that right?
A. Well, I wouldn't know whether it is right. I don't have such a clear recollection of my words, whether I said completely this, which I may have said, or whether I simply insisted on the fact that it was an act that was still necessary in order to get this royal consent for our marriage.
The Court: Q. Do you recall whether she did anything other than sign the application in this matter? Did she
do anything to acquire this Italian citizenship, other
84 than to sign the application that you have before you, that you have seen?
A. Well, no, there are two—
Q. Yes, those two (indicating).
A. Yes, those two—no.
Q. That is all she did?
A. That is all, so far as I know.
Q. So far as you know. Did she at any time appear

before any Court or any state office or legation and renounce her allegiance to the United States government?

A. No, nothing of that kind.

Mr. Bablitch: Q. That document that she did execute in November, however, did contain that provision, did it not?

The Court: Q. And those documents were in Italian?

A. Those documents were in the Italian language.

Q. At that time, could your wife read the Italian language?

A. No.

Q. What was your wife doing at the time you married her? Was she employed in any business?

A. No, she was staying in St. Louis with her brother, who had some business in St. Louis.

Q. She hadn't any business training of any kind, so far as you know?

A. No. I think she had with her brother.

Q. What is that?

A. I think she had her brother—

Q. I mean she wasn't employed in any business of any kind, where she acquired any training in business?

A. No. She wasn't employed.

The Court: That is all.

Mr. Bablitch: Did you ever study Latin?

A. Yes, I did.

Q. Much of it?

A. Eight years.

Mr. Alstad: I don't see how that is germane.

Mr. Bablitch: I just wanted to ask him this question:

Q. There is a very close identity between the Italian language and the Latin language, is there not?

A. No.

Q. There is an identity, however?

A. I don't know—no, I don't think there is an identity. I could not read today a Latin text and understand it, although I know very well the Italian language.

Mr. Bablitch: That is all.

The Court: That is all.

(Witness excused.)

Mr. Bablitch: If the Court please, I would suggest that the exhibits which have been identified in behalf of the government, that we withhold offering them in evi-

dence at this time, because they are really not the best evidence. We may get them later on.

Mr. Alstad: I raise no objection to them, your Honor.

The Court: They may be withheld, and offered later.

Mr. Bablitch: All right, thank you.

The Court: We will take a recess at this time.

(The above and foregoing were all of the proceedings had on the hearing of said cause on this date.)

87 IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of Wisconsin.

I, John R. Adams, official court reporter of the District Court of the United States for the Western District of Wisconsin, do hereby certify that as such reporter I was present in said Court during its session held in the City of Wausau, in said Western District and State of Wisconsin, on Friday, the 3rd day of January, 1947, and that I then and there reported in shorthand the proceedings had on the hearing of the above entitled cause; that I thereafter caused the foregoing typewritten transcript to be prepared from my original shorthand notes, so taken at said time and place, and that the above and foregoing is a full, true, and complete transcript of said proceedings.

Dated at Madison, Wisconsin, this 9th day of January, 1947.

John R. Adams,
*Official Court Reporter.*

88 **EXHIBIT 1.**

On, Regio Ministero Dell'Interno Roma

La sotoscritta Signorina Rosetta Andrus Sorge di Albert O., nata a Reedsburg, Stato del Wisconsin (Stati Uniti,) il 2 maggio 1915, residente in St. Louis, Stato del Missouri, cittadina degli Stati Uniti d'America, con-la presente fa istanza affinche le venga consessa la cittadinanza italiana ai sensi dell' articolo 4 della Legge 13 giugno 1912, n. 535, come modificato dall'art. 1 del R. D. Legge 1 dicembre 1934, n. 1997, e che ad essa vengano estesi i benefici previsti nell'ultimo comma dell'articolo 4 sopra menzionato.

Con ogni osservanza,

(signed) Rosette Andrus Sorge.

St. Louis Missouri, 28 marzo 1940/XVIII.

Indirizzo:
c/o Hotel Coronado
Lindell at Spring
St. Louis, Missouri
(U. S. A.)

89 **EXHIBIT 2.**

**Translation.**

**R. Consulate General of Italy**

**Victor Emannuel III**

**By the Grace of God and the will of the Nation**
**King of Italy and Albania**
**Emperor of Ethiopia**

**On this day November 23rd, 1940, 19th of the Fascist Era, in the Chancery of this Royal Consulate General in this post, Miss Rosetta Andrus Sorge, daughter of Lucinda E. Wheeler and Alberto O. Sorge, born in Reedsburg, Wisconsin, the second of May 1915, to whom in virtue of Article 4 of the law of June 13, 1912 #555 modified by article 1 of the Royal Decree Law of the first of December 1934 #1997, is conceded the Italian citizenship with the Royal Decree law of August 23, 1940 XVIII, registered in the Corte dei Conti on September 26 the u. s., came before us, Comm. Riccardo Moscati, R. Consul General in this post, invested with the functions of Civil status official.**

**The person in question, having been requested to take an oath as prescribed by article 5 of the aforementioned law, as prescribed in article 5 of the R. Decree 2d of August 1912, #949 pronounced the following words:**

**"I, Rosetta Andrus Sorge, born an American citizen, declare I renounce and in truth do renounce my American citizenship, and swear to be faithful to H. M. the King**
90 **of Italy and Albania, Emperor of Ethiopia, to his royal successors, and to loyally observe the statutes and other laws of the Kingdom of Italy."**

**Present were as witnesses Mr. Giuseppe Dall'Agnel fu Antonio age 58, native of Molvena Prov. of Vicenza, Royal Chancellor attached to this R. Consulate General, and the lawyer Edoardo a Fiori di Giovanni, age 41, native of San Vito, Cadore, Prov. di Belluno, Legal attache of this R. Consulate General.**

And we, R. Consulate General, have written in 5 copies, the present document that comes from us, Miss Rosetta Andrus Sorge and the undersigned witnesses.

(Signed) Rosetta Andrus Sorge,
G. Dall'Agnol,
Eduardo A. Fiori.

R. Moscato
(Seal of the R.
Italian Consulate
Chicago)

91 EXHIBIT 3.

Form No. PR-1 To be Prepared in Duplicate

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

FOREIGN OFFICIAL STATUS NOTIFICATION

900060 (Division of Protocol
Mar. 6, 1941
Department of State)

Date February 5, 1941

To the Secretary of State:

In accordance with applicable instructions attached hereto, and in connection with the act of June 15, 1917, the act of June 8, 1938, as amended, the act of June 28, 1940, the act of July 1, 1940, and the act of September 16, 1940, I desire to submit the following information for the purpose of regularizing my official status and of claiming any exemption from registration accorded my status under the above-mentioned Acts and regulations promulgated thereunder:

1. Full name Rosette Andrus Savorgnan.

2. Name of government and agency or department thereof, if any, being served...//.....

3. Present nationality Italian.

4. Previous nationality or nationalities, if any American, U. S. A.

5. (a) Place of birth Reedsburg, Wisconsin, U. S. A.
(b) Date of birth May second 1915.

92 6. Port or place, date and manner of last arrival in the United States and name of vessel, if any..//...

7. Status under which last admitted (check one):
Immigrant Temporary visitor
Government official or employee Other
(Please describe)

8. Name used at time of last entry, if different from present name..../...

9. Name and nationality of husband or wife, and address if separate from signer's Alessandro Savorgnan, Royal Italian Vice Consul, Italian.

10. Names, ages, and nationalities of children, and their addresses if different from signer's..../...

11. Names and nationalities of other relatives who are members of signer's household..../...

12. Names and nationalities of personal and domestic employees who are members of signer's household..//...

13. Capacity in which signer is now serving, giving title of position, if any..../...

14. Date of assumption of present duties in the United States..../...

15. Detailed statement of signer's present and pro-
93 posed activities, including the place or places of performance and for whom performed or to be performed..../...

16. Nature and place or places of occupation or employment during the last 5 years..../...

17. Business address, or addresses if more than one..../...

18. Home address in the United States, or addresses if more than one c/o Embassy Apartments, 530 North Union Boulevard, St. Louis, Missouri.

19. If declaration to become an American citizen has been filed, state the date and place of application..//..

20. If visiting in the United States temporarily as a tourist, or for personal business or pleasure, or if passing in transit through the United States, the following additional information must be furnished:

(a) Whether on private business or for pleasure and if on private business, state the agency, firm, or persons represented..../...

(b) Temporary address in United States....//.....
(c) Date of proposed departure....//.....
(d) Port or place of proposed departure....//.....
(e) Country to which proceeding....//.....

94 I will immediately notify the Secretary of State through appropriate channels of any change in my status, activities, or in the other information set forth in this notification.

(Signed) Rosette Savorgnan.

(Photograph)

Instructions.

1. This form is to be used by all officers, officials, and employees of foreign governments, or of agencies or departments thereof (other than ambassadors, ministers, and members of their missions whose names appear in the Diplomatic List), assigned to, acting, residing, or visiting in or traveling through the United States, its territories or possessions, members of their families and their personal and domestic employees, for the purpose of regularizing their official status and of claiming any exemption from registration accorded that status under the following statutes and the regulations promulgated thereunder:

(a) The act of June 15, 1917 (40 Stat. 226). This act provides, in part, that no person other than a diplomatic or consular officer or attache shall act in the United States as an agent of a foreign government without prior notification to the Secretary of State, and contains various other related provisions.

(b) The act of June 8, 1938, as amended (52 Stat. 631; 53 Stat. 1244). This act provides, in part, that every person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for the government or a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation,
95 or political organization, or a domestic organization subsidized directly or indirectly in whole or in part by any of such entities, or who receives compensation from or is under the direction of any of the foregoing shall file with the Secretary of State a registration statement as prescribed therein, and contains various other related provisions. It exempts, among others, a duly accredited diplo-

matic or consular officer of a foreign government who is so recognized by the Department of State of the United States, any official, other than an American citizen, of a foreign government recognized by the United States as a government or member of the staff or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such official, member of staff or employes are of record in the Department of State.

(c) The act of June 28, 1940 (Public, No. 670, 76th Cong., 3d Sess.). This act provides, in part, that every alien (other than a foreign government official or member of his family) in the United States who is 14 years of age or older, who has not been registered and fingerprinted at the time of the issuance of a visa for entrance into the United States, and who remains in the United States for 30 days or longer, shall apply for registration and fingerprinting before the expiration of such 30 days, and contains various other related provisions.

(d) The act of July 1, 1940 (Public, No. 701, 76th Cong., 3d Sess.). This act provides, in part, that accredited officials of foreign governments, recognized by the Government of the United States, their families, attendants, servants, and employees, who fail to maintain the status under which admitted, may be required to depart from the United States, and contains various other related provisions.

(e) The act of September 16, 1940 (Public, No. 783, 76th Cong., 3d Sess.). This act provides, in part, that every male alien residing in the United States who, on the day or days fixed for registration thereunder is between the ages of 21 and 36 shall present himself for and submit to registration as prescribed therein, and contains various other related provisions. It exempts from such registration diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, who are not citizens of the United States, and who have not declared their intention to become citizens thereof.

96 2. All statements should be in English or be accompanied by an English translation. The statements, with the exception of signature, should be typewritten but will be accepted if written legibly in ink.

3. All spaces in the form should be properly filled in.

If they are not so filled in, the form will not be accepted by the Secretary of State for filing.

4. Where space does not permit full statements, the information required may be set forth in supplementary papers incorporated by reference in the form and submitted therewith.

5. Acceptance by the Secretary of State of this form for filing shall not necessarily signify a full compliance with the above-mentioned acts and shall not preclude such action as may be deemed necessary and permissible under such acts by the Government of the United States. Nor shall the submission or acceptance thereof be regarded as a claim for or a recognition of the privilege of diplomatic immunity conferred by international law or custom.

6. The date on which the form properly filled out is received by the Secretary of State shall be considered the date of filing thereof.

7. No person required to register or to file a registration statement (as distinguished from the notification statement, required by the act of June 15, 1917) under any other of the above-mentioned acts or the regulations promulgated thereunder is relieved of that duty by filing this form.

8. Any return to the United States from a visit of less than 6 months in Canada or Mexico should not be reported as a last arrival in item No. 6.

9. Each wife or husband referred to in item No. 9 must file a separate form if in the United States.

10. All children, referred to in item No. 10, who are 14 years of age or over, who are not citizens of the United States and who are in the United States in the status of a member of the family of a foreign government official, must each file a separate form.

11. Each relative referred to in item No. 11 must file a separate form.

97 12. Each personal or domestic employee referred to in item No. 12 must file a separate form.

13. With reference to item No. 15, give the precise nature of present and proposed activities and the place where they are to be performed, and the name of the government or persons represented. Information should be given in detail of not only the proposed official activities which are to be carried on in this country, but also of any other employment or activities which are to be carried on in this country on behalf of a foreign government,

agency, corporation, or person, with particular reference as to whether signer is acting or intends to act as a public-relations counsel or publicity agent as defined in the regulations promulgated under the act of 1938, and whether signer intends to engage in any political or other activities on behalf of any foreign country or party, other than that specifically disclosed.

14. The Secretary of State must be immediately notified of any change in status or in the nature of the activities disclosed herein.

15. A supply of this form may be obtained on written request to, or by telephoning the Department of State, Washington, D. C. (Telephone: Republic 5600, Branch 266.)

98 **EXHIBIT 4.**

130—Savorgnan
LC. egt.

AMERICAN CONSULAR SERVICE.

AMERICAN CONSULATE

Rome, Italy, January 24, 1945

Department of State
Mrs. Rosette Andrus Savorgnan,
91 Via Barnaba Oriani,
Rome.

Madam:

The Consulate refers to the application for registration as an American citizen which you executed on October 23, 1944, and is pleased to inform you that it has been approved by the Department of State at Washington.

Very truly yours,
(Signed) Linton Crook,
*American Vice Consul.*

99 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

## AFFIDAVIT.

Edgar M. Alstad being first duly sworn on oath deposes and says:

1. That on the 3rd day of January, 1947, when testimony was taken in the above entitled matter it was stipulated by and between the Assistant United States Attorney and Attorney for the Plaintiff, that petitioner's counsel present an Affidavit at the time of trial, that either or both of the witnesses Rosette Sorge Savorgnan and Alessandro Sanorgnan were still outside of the continental United States.

That affiant has received a letter from the Savorgnans, copy of which together with the envelope is attached hereto.

That to my best knowledge and belief the Savorgnans are still outside the continental limits of the United States.

Dated: 25 June, 1947.

/S/Edgar M. Alstad.

Subscribed and sworn to before me this 26th day of June, 1947.

/S/ Walter A. Lapinske,
*Deputy Clerk U. S. District Court, Western District of Wisconsin.*

(Seal)

100 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

## STIPULATION.

(Filed 8/19/47, Herbert C. Hale, Clerk.)

It Is Hereby Stipulated And Agreed by and between the parties hereto, by their respective attorneys, that the affidavit of Rosette Sorge Savorgnan, subscribed and sworn to on February 12, 1946 before A. E. E. Mason, Notary Public, District of Columbia, which is attached hereto without the exhibits referred to therein, shall be marked as Exhibit 5 and considered a part of the record in the above-entitled case.

August 18th, 1947.

Edgar M. Alstad,
*Attorney for the Plaintiff.*

August 15, 1947.

James E. Doyle,
*Assistant United States Attorney, Attorney for the Defendant.*

102 AFFIDAVIT.

United States of America, } ss.
District of Columbia. }

Rosette Sorge Savorgnan having been duly sworn, deposes and says:

1. I was born at Reedsburg, Wisconsin on May 2, 1915, as shown by attached birth certificate (Exhibit A); my parents Albert O. Sorge, and Lucinda Wheeler Sorge were both native born Americans, having been born in Reedsburg, Wisconsin.

2. From the date of my birth until July, 1941, I resided continuously in the United States and never before left the country.

3. On or about 1 August 1940 I applied, at the sugges-

tion of my then intended husband, through the Italian Consulate at Chicago, Illinois for Italian citizenship. This application was made pro forma, and solely for the purpose of my husband obtaining permission from the Italian Government as a Diplomat, to marry a foreigner. The application was written in the Italian language (see Ex. B) (see also Exhibit D).

4. On or about 20 November, 1940 as a final step in the process of obtaining the aforesaid naturalization, I signed an oath of allegiance, pro forma, to the King of Italy. This oath was also written in the Italian language (See Exhibit C).

5. On 26 December, 1940, having obtained the necessary technical Italian citizenship, as indicated in Pars. 3 and 4 above, I married Alessandro Savorgnan, a diplomatic
103 officer in the Italian Foreign Service. We were married at Waukon, Iowa. Mr. Savorgnan was at that time Italian Vice Consul at St. Louis, Missouri, having served in this post since 1936.

6. On or about 15 July, 1941, Mr. Savorgnan, along with other consular personnel throughout the United States, was compelled, by executive order, to leave the country. Practically without notice and without opportunity for any planned or considered departure, I accompanied my husband (upon the SS Westpoint) to Italy. No time was permitted for me to obtain an American passport before my departure.

7. Due to the outbreak of war and its continuation subsequent to my leaving the United States, I was compelled to remain outside of the United States from the time of my departure in 1941, until my return in 1945. It is unnecessary to accentuate the fact that my continued absence from the United States was due exclusively to war time conditions. In no sense can a logical deduction be made that my leaving the country was made for the purpose of taking up a permanent residence abroad. Even though Mr. Savorgnan is still abroad, I intend to maintain forever, my permanent residence in the United States, and while I may accompany Mr. Savorgnan for limited periods during his assignments to foreign posts, I nevertheless have no intention whatsoever of abandoning my permanent residence in the United States or divesting myself of my American citizenship.

8. On or about 19 June 1944, upon the entry of the

United States Army into Rome, I immediately identified myself to our American Military Authorities. At once I was employed by the Allied Control Commission and served with it continuously until my return to the United States in 1945.

104 9. On or about 15 October 1944, upon the reopening of the U. S. Consulate in Rome, I applied through regular procedure for registration as an American Citizen.

10. On or about 1 January 1945 the American Consulate at Rome notified me in writing that the Department of State had approved my registration as an American citizen and that I should appear at the Consulate not later than October 23, 1946 in order to renew the registration and prevent its expiration.

11. Between January and April 1945, both the U. S. Army, U. S. Navy Authorities arranged transportation for my return to the United States. Upon my request to the U. S. Consul at Rome for my passport, I was informed that a passport would not be issued; that since my registration the case was being reconsidered and that the outcome was pending in the State Department (Washington). No other information was given me.

12. On or about 1 June 1945, I was advised by the U. S. Consul at Rome that the State Department was of the opinion that I had expatriated myself under Section 2, Act of March 2, 1907; and that no passport would be issued. I was advised, however, that I would be given a visitor's visa.

13. At the first opportunity afforded me I returned to the United States under a visitor's visa, entering the country at the port of Boston, Mass., on Nov. 1, 1945.

14. I was admitted to the United States as indicated above on an Italian Diplomatic Passport, (No. 111) dated 30 May, 1945, bearing a visa granted under Section
105 3 (2) as a visitor for a period of x x months.

15. I particularly wish to emphasize that it was my intention upon departure from the United States not to take up permanent residence abroad, and also that I have never established a permanent residence abroad. The reasons for my departure, as indicated by the circumstances stated above, were merely of a marital and compassionate nature. As a matter of fact, there were substantial reasons for my belief that my sojourn from the United States would only be a temporary one. In this regard no evidence or

any other proof has been adduced by the State Department or other Government agency that shows any intention to take up permanent residence abroad.

16. While not being conversant with all of the laws, policies, etc., governing nationality and expatriation, it was likewise my firm intention to in no way divest myself of my American citizenship. The Act of March 2, 1907, under which the State Department maintained I expatriated myself, was repealed on January 13, 1941 by the Nationality Act of 1940. My departure from the United States as stated above, did not occur until 15 July, 1941—or 6 months after the law of 1907 had become non-effective. Because of this fact, but more especially because I have never taken up permanent residence abroad, it is apparent that I cannot be considered as having expatriated myself. As stated above, application for Italian citizenship and oath of allegiance were executed prior to January 13, 1941,—consequently the execution of these papers could not cause my expatriation under the National Act of 1940. Neither have I performed any other act which might be considered justification for denying me the status of an American citizen.

106 17. In accordance with the aforesaid facts, I hereby request the Commissioner of Immigration and Naturalization at Philadelphia to amend and correct the record of my admission to the United States to show my status as an American Citizen at the time of my entry into the United States.

Further deponent saith not.

/s/ Rosette Sorge Savorgnan.

Subscribed and sworn to before me this 12th day of February, 1946.

/s/ A. E. E. Mason,
*Notary Public, District of Columbia.*

(Notarial Seal)

My Commission expires December 14, 1948.

107 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—1738) * *

## MEMORANDUM OPINION.

(Filed 9/10/47, Herbert C. Hale, Clerk.)

In this action plaintiff seeks judgment declaring that she is an American citizen.

It appears from the proofs submitted that plaintiff was born at Reedsburg, Wisconsin, on May 2, 1915; that her parents were both native born Americans. From the date of her birth until July 15, 1941, she resided continuously in the United States; that on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then intended husband, Alessandro Savorgnan, she applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship. The application was made solely for the purpose of obtaining consent from the Italian Government to her marriage to Savorgnan, who was at that time in the Diplomatic Service of Italy and located in this country. On November 23, 1940, at Chicago, Illinois, the plaintiff, at the request of said Savorgnan, signed an oath of allegiance to the Italian Government. The application and oath were written in Italian. Plaintiff at that time could not read, write, or understand that language. She assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage.

108 Plaintiff married Alessandro Savorgnan on December 26, 1940, at Waukon, Iowa. He was at that time Italian Vice Consul at St. Louis, Missouri, having served in that post since 1936.

On February 5, 1941, she signed a form filled out in the English language and prepared by her husband, required to be filed with the United States Department of State by members of the families of foreign diplomats residing in the United States, and in this form she listed her present nationality as Italian.

On or about July 15, 1941, Savorgnan, along with other consular personnel throughout the United States, was compelled, by executive order, to leave the country. Practically without notice and without any opportunity for any

planned or considered departure, plaintiff accompanied her husband to Italy. No time was permitted for her to obtain an American passport before her departure and she departed from this country on a foreign visitor's visa.

Due to the outbreak of the war and its continuation subsequent to her arrival in Italy, she was compelled to remain in that country from July 1941 until she returned to the United States in 1945. Her absence from the United States was due to the war time conditions. In July 1941 when she left this country for Italy she did so without any intention of establishing a permanent residence abroad or abandoning her residence in the United States, or of divesting herself of her American citizenship.

On June 19, 1944, upon the entry of the United States Army into Rome, she immediately identified herself with the American Military Authorities and was thereafter employed by the Allied Control Commission and served with it continuously until she returned to the United States in 1945.

109 On October 15, 1944, upon the reopening of the United States Consulate in Rome, she applied through the regular procedure for registration as an American citizen.

On January 1, 1945, the American Consulate at Rome notified her in writing that the Department of State had approved her registration as an American citizen, and directed her to appear at the Consulate not later than October 23, 1946, to renew the registration and prevent its expiration.

Between January and April 1945, both the U. S. Army and the U. S. Navy Authorities arranged transportation for her return to the United States. Upon her request to the U. S. Consul at Rome for her passport, she was informed that a passport would not be issued inasmuch as her registration was being reconsidered and that the outcome was pending in the State Department in Washington.

On June 1, 1945, she was advised by the U. S. Consul at Rome that the State Department was of the opinion that she had expatriated herself and that no passport would be issued. She was advised, however, that she would be given a visitor's visa. She returned to the United States on November 1, 1945, on an Italian Diplomatic Passport. While she was awaiting the decision of the State Department with reference to her status as an American citizen she re-

ceived word of her mother's serious illness and made plans to promptly return to this country, and it was for that purpose she used the Italian Diplomatic Passport. Her mother died before she arrived in Wisconsin.

The plaintiff testified that at the time she signed the application for Italian citizenship and the oath of allegiance to the Italian Government, she simply signed the two documents, Exhibits 1 and 2, without any formal proceed-
110 ings. Both documents were signed in this country before an Italian officer and not before any official of the United States Government. At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country, or establishing a permanent residence in any other country. After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission.

Plaintiff relied on her husband's statement and assurance, that by signing the documents identified as Exhibits 1 and 2, she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship. She never voted at any election in Italy but did vote in Wisconsin before and after her marriage.

I am satisfied from the proofs submitted that at the time plaintiff signed Exhibits 1 and 2 she had no present or fixed intention in her mind to expatriate herself. She remained in this country for about seven months after signing the documents in question.

> "Expatriation is a matter of intent on the part of the person concerned, which intent must be shown by some express act or some other act from which it can be gathered."
>
> *Perkins, Secretary of Labor et al.* v. *Elg*, 99 F. 2d 408.

> "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance."
>
> *Perkins, Secretary of Labor et al.* v. *Elg*, 307 U. S. 325.

Knowledge is necessary to intention. If plaintiff, at the time she executed Exhibits 1 and 2, did not know or realize that she was renouncing allegiance to this country, her action was unintentional and of no validity.

111 Intention is a fact to be proven, and it clearly appears from the proofs submitted in this action that the plaintiff did not intend at the time she signed the documents in question to divest herself of her American citizenship or to establish a permanent residence abroad. Forsaking her country, departing therefrom, and knowingly renouncing her allegiance to it are essential requirements to expatriation. The plaintiff did not knowingly renounce or relinquish her American citizenship and is entitled to judgment declaring her to be an American citizen.

Dated: September 10, 1947.

Patrick T. Stone,
*United States District Judge.*

112 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—1738) * *

## FINDINGS OF FACT, CONCLUSION OF LAW AND JUDGMENT.

(Filed 9/10/47, Edgar M. Alstad, Clerk.)

The above-entitled action having come on for trial at the present term of the above named court; Edgar M. Alstad, Madison, Wisconsin, appearing for the plaintiff; Charles H. Cashin, United States Attorney, and James E. Doyle, Assistant United States Attorney, appearing for the defendants; and the Court having considered the proofs and briefs submitted by the parties, and being fully advised in the premises makes the following Findings of Fact and Conclusion of Law:

### Findings of Fact.

1. That the plaintiff, Rosette Sorge Savorgnan, was born at Reedsburg, Wisconsin, on May 2, 1915; that her parents were both native born Americans. From the date of her birth until July 15, 1941, she resided continuously in the United States; that on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then

intended husband, Alessandro Savorgnan, she applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship. The application was made solely for
the purpose of obtaining consent from the Italian
113 Government to her marriage to Savorgnan, who was at
that time in the Diplomatic Service of Italy and located in this country. On November 23, 1940, at Chicago, Illinois, the plaintiff, at the request of said Savorgnan, signed an oath of allegiance to the Italian Government. The application and oath were written in Italian. Plaintiff at that time could not read, write or understand that language. She assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage.

2. That the plaintiff married Alessandro Savorgnan on December 26, 1940, at Waukon, Iowa. He was at that time Italian Vice Consul at St. Louis, Missouri, having served in that post since 1936.

3. That on February 5, 1941, plaintiff signed a form filled out in the English language and prepared by her husband, required to be filed with the United States Department of State by members of the families of foreign diplomats residing in the United States, and in this form she listed her present nationality as Italian.

4. That on or about July 15, 1941, Savorgnan, along with other consular personnel throughout the United States, was compelled, by executive order, to leave the country. Practically without notice and without any opportunity for any planned or considered departure, plaintiff accompanied her husband to Italy. No time was permitted for her to obtain an American passport before here departure and she departed from this country on a foreign visitor's visa.

5. Due to the outbreak of the war and its continuation subsequent to plaintiff's arrival in Italy, she was compelled to remain in that country from July 1941 until she returned to the United States in 1945. Her absence from the United States was due to the war time conditions. In July 1941 when she left this country for Italy she did so without
any intention of establishing a permanent residence
114 abroad or abandoning her residence in the United
States, or of divesting herself of her American citizenship.

6. On June 19, 1944, upon the entry of the United

States Army into Rome, plaintiff immediately identified herself with the American Military Authorities and was thereafter employed by the Allied Control Commission and served with it continuously until she returned to the United States in 1945.

7. On October 15, 1944, upon the reopening of the United States Consulate in Rome, plaintiff applied through the regular procedure for registration as an American citizen.

8. That on January 1, 1945, the American Consulate at Rome notified plaintiff in writing that the Department of State had approved her registration as an American citizen, and directed her to appear at the Consulate not later than October 23, 1946, to renew the registration and prevent its expiration.

9. That between January and April 1945, both the U. S. Army and the U. S. Navy Authorities arranged transportation for plaintiff's return to the United States. Upon her request to the U. S. Consul at Rome for her passport, she was informed that a passport would not be issued inasmuch as her registration was being reconsidered and that the outcome was pending in the State Department in Washington.

10. That on June 1, 1945, plaintiff was advised by the U. S. Consul at Rome that the State Department was of the opinion that she had expatriated herself and that no passport would be issued. She was advised, however, that she would be given a visitor's visa. She returned to the United States on November 1, 1945, on an Italian Diplomatic Passport. While she was awaiting the decision of the State Department with reference to her status as an American citizen she received word of her mother's serious illness and made plans to promptly return to this county, and it was for that purpose she used the Italian Diplomatic
115 Passport. Her mother died before she arrived in Wisconsin.

11. That at the time plaintiff signed the application for Italian citizenship and the oath of allegiance to the Italian Government, Exhibits 1 and 2, she did so without any formal proceedings. Both documents were signed in this country before an Italian officer and not before any official of the United States Government. At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country, or establishing

a permanent residence in any other country. After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission.

12. That plaintiff relied on her husband's statement and assurance, that by signing the documents identified as Exhibits 1 and 2, she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship. She never voted at any election in Italy but did vote in Wisconsin before and after her marriage.

13. That plaintiff remained in this country for about seven months after she signed the documents in question. At the time she affixed her signature thereto she had no present or fixed intention in her mind of renouncing her allegiance to this country, and in fact never did intend to divest herself of American citizenship.

14. That the plaintiff did not knowingly renounce or relinquish her American citizenship.

Conclusion of Law.

1. That the plaintiff is entitled to judgment adjudging that she now is and has been since the date of her birth, a citizen of the United States of America.

116 Judgment.

On the foregoing Findings of Fact and Conclusion of Law,

It Is Adjudged and Decreed That plaintiff, Rosette Sorge Savorgnan, never lost or relinquished her United States citizenship, and that she is now and has been since the date of her birth a citizen of the United States of America.

Dated this 10th day of September, 1947.

Patrick T. Stone,
*United States District Judge.*

And afterward, to-wit, on the tenth day of February, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

February 10, 1948.

Before:

Hon. William M. Sparks, Circuit Judge.

| | |
|---|---|
| Rosette Sorge Savorgnan, *Plaintiff-Appellee,* vs. The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.* | Appeal from the District Court of the United States for the Western District of Wisconsin. |
| 9550 | |

Pursuant to stipulation of counsel, it is ordered that the heading of the "Stipulation as to the Record on Appeal," dated January 15, 1948, which constitutes a part of the record on appeal heretofore certified to this Court by the Clerk of the United States District Court for the Western District of Wisconsin, be, and the same is hereby, amended to show as parties defendants, the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Pursuant to further stipulation of counsel, it is ordered that Watson B. Miller, Commissioner of Immigration and Naturalization, be, and he is hereby, substituted as a party defendant-appellant for Ugo Carusi, Commissioner of Immigration and Naturalization Service.

117 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

For the Western District of Wisconsin.

Rosette Sorge Savorgnan,
*Plaintiff,*
*vs.*
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
*Defendants.*
} Civil No. 1738.

## NOTICE OF APPEAL.

(Filed 12/8/47. Edgar M. Alstad, Clerk.)

Notice is hereby given that the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service, defendants above named, hereby appeal to the Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on September 10, 1947.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin, Attorney for the Defendants.*

By James E. Doyle,
*Assistant United States Attorney, Western District of Wisconsin.*

And afterward, to-wit, on the tenth day of November, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

November 10, 1948

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Luther M. Swygert, District Judge.

| | | |
|---|---|---|
| Rosette Sorge Savorgnan, *Plaintiff-Appellee,* vs. The United States of America, Tom C. Clark, the Attorney General for the United States of America and Watson B. Miller, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.* | 9550 | Appeal from the United States District Court for the Western District of Wisconsin. |

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Carlisle P. Runge, counsel for the appellants, and by Mr. Carl A. Flom, counsel for the appellee, and the Court takes this matter under advisement.

118 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

## STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL.

(Filed 1/15/38. Edgar M. Alstad, Clerk.)

Defendants, United States of America, et al., propose on their appeal to the Circuit Court of Appeals for the Seventh Circuit to rely on the following points as error:

1. The District Court erred in finding as a fact that plaintiff's application for Italian citizenship on or about August 1, 1940, "was made solely for the purpose of obtaining consent from the Italian Government to her marriage to Savorgnan".

2. The District Court erred in finding as a fact that when plaintiff signed an oath of allegiance to the Italian Government on November 23, 1940, at Chicago, Illinois, "she assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage."

3. The District Court erred in finding as a fact that when, on or about July 15, 1941, her husband was compelled by executive order to leave the country: "Practically without notice and without any opportunity for any planned or considered departure, plaintiff accompanied
119 her husband to Italy. No time was permitted for her to obtain an American passport before her departure and she departed from this country on a foreign visitor's visa."

4. The District Court erred in finding as a fact that: "Due to the outbreak of the war and its continuation subsequent to plaintiff's arrival in Italy, she was compelled to remain in that country from July 1941 until she returned to the United States in 1945. Her absence from the United States was due to the war time conditions. In July 1941 when she left this country for Italy she did so without any intention of establishing a permanent residence abroad or abandoning her residence in the United States, or of divesting herself of her American citizenship."

5. The District Court erred in finding as a fact: "That

at the time plaintiff signed the application for Italian citizenship and the oath of allegiance to the Italian Government, Exhibits 1 and 2, she did so without any formal proceedings. * * * At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country, or establishing a permanent residence in any other country. After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission."

6. The District Court erred in finding as a fact: "That plaintiff relied on her husband's statement and assurance, that by signing the documents identified as Exhibits 1 and 2, she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship."

7. The District Court erred in finding as a fact that: "At the time she affixed her signature thereto [the documents in question] she had no present or fixed intention in her mind of renouncing her allegiance to this
120 country, and in fact never did intend to divest herself of American citizenship."

8. The District Court erred in finding as a fact: "That the plaintiff did not knowingly renounce or relinquish her American citizenship."

9. The District Court erred in holding that plaintiff never lost or relinquished her United States citizenship and that she is now and has been since the date of her birth a citizen of the United States of America.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin, Attorney for Defendants.*

121 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

## ORDER FOR SUBSTITUTION OF ATTORNEY.

(Filed 1/15/48. Edgar M. Alstad, Clerk.)

On the motion of Carl Flom, Attorney, Madison, Wisconsin, and with the consent of the defendant herein by its attorney, Charles H. Cashin, United States Attorney for the Western District of Wisconsin, as indicated below,

It is ordered and adjudged that Carl Flom be and he is hereby substituted for Edgar M. Alstad as attorney of record for plaintiff herein.

Dated January 15, 1948.

Patrick T. Stone,
*United States District Judge.*

Consent is hereby given to the entry of the foregoing order without further hearing or notice.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin, Attorney for Defendant.*

Dated January 12, 1948.

122 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

## ORDER CORRECTING PRIOR ORDER FOR SUBSTITUTION OF ATTORNEY.

(Filed 2/6/48. Edgar M. Alstad, Clerk.)

On January 15, 1948, an order was entered herein substituting Carl Flom for Edgar M. Alstad as attorney of record for the plaintiff herein. In the heading of said order, the United States of America erroneously appears as the sole defendant herein.

It is hereby ordered and adjudged that the heading of the said order of January 15, 1948, is corrected to show as defendants herein, the United States of America, Tom C. Clark, The Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Dated February 6th, 1948.

Patrick T. Stone,
*United States District Judge.*

123 District Court of the United States of America.

Western District of Wisconsin.

I, Edgar M. Alstad, Clerk of the District Court of the United States of America, for the Western District of Wisconsin, do hereby certify that I have compared the writings annexed to this Certificate, with the originals now in my custody, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said Court, at the city of Madison, in the said Western District of Wisconsin, this 9th day of February, in the year of our Lord, one thousand nine hundred and forty-eight and of the independence of said United States the one hundred and seventy-second.

Edgar M. Alstad,
*Clerk.*

(Seal)

124 In the District Court of the United States of America.

* * (Caption—1738) * *

## STIPULATION AS TO THE RECORD ON APPEAL.

(Filed 1/15/48. Edgar M. Alstad, Clerk.)

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following parts of the record, proceedings, and evidence in the above-entitled action are hereby designated to be in-

cluded and shall be included in and constitute the record on appeal to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Petition for declaratory judgment.
2. Answer to petition for declaratory judgment.
3. Journal entry of November 21, 1946, showing order granting plaintiff leave to file an amended petition for declaratory judgment.
4. Amended petition for declaratory judgment.
5. Answer to amended petition for declaratory judgment.
6. Transcript of entire proceedings at hearing in the District Court at Wausau, Wisconsin, at 2 p. m. on January 3, 1947.
7. Stipulation dated August 15 and 18, 1947, for the inclusion of an affidavit of plaintiff in the record as Exhibit 5.
8. Affidavit of plaintiff's attorney, dated June 25, 1947, stating, on information and belief, that as of that date plaintiff was outside the continental limits of the United States, without letter and envelope referred to therein.
9. Findings of Fact, Conclusion of Law, and Judgment.
10. Memorandum Opinion of the District Court.
11. Notice of Appeal.
12. Order dated January 15, 1948 permitting substitution of Carl Flom for Edgar M. Alstad as attorney for plaintiff.
13. Points to be relied upon on appeal.

January 15, 1948.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin, Attorney for Defendant-Appellant.*
Room 241, Federal Building
Madison 1, Wisconsin.

January 15, 1948.

Carl Flom,
*Attorney for Plaintiff-Appellee,*
119 East Washington Avenue,
Madison 3, Wisconsin.

126 CLERK'S CERTIFICATE OF RECORD ON APPEAL.

United States District Court,
Western District of Wisconsin. } ss.

I, Edgar M. Alstad, Clerk of the United States District Court for said district, do hereby certify that I have compared the foregoing transcript with the records of this Court now remaining in my office in the case therein pending, entitled:

* * (Caption—1738) * *

and that the same is a true and correct transcript of the documents requested by the parties, and I further certify that the said transcript is composed of true copies of original documents, to-wit:

Copy of petition for declaratory judgment ..... Document No. 1
Copy of answer to petition for declaratory judgment ..... Document No. 3
Copy of journal entry of November 21, 1946, showing order granting leave to file an amended petition for declaratory judgment.
Copy of amended petition for declaratory judgment ..... Document No. 5
Copy of answer to amended petition for declaratory judgment ..... Document No. 8
Copy of transcript of entire proceedings at hearing in the District Court at Wausau, Wisconsin, at 2 p. m. on January 3, 1947 ..... Document No. 7
Copy of stipulation dated August 15 and 18, 1947, for the inclusion of an affidavit of plaintiff in the record as Exhibit 5 ..... Document No. 13
Copy of affidavit of plaintiff's attorney, dated June 25, 1947, stating, on information and belief, that as of that date plaintiff was outside the continental limits of the United States, without letter and envelope referred to therein.

Copy of Findings of Fact, Conclusions of Law, and Judgment ....Document No. 16
Copy of Memorandum Opinion of the District Court .....Document No. 15
Copy of Notice of Appeal .....Document No. 17
127 Copy of Order dated January 15, 1948 permitting substitution of Carl Flom for Edgar M. Alstad as attorney for plaintiff .....Document No. 18
Copy of points to be raised upon appeal. (20)
Finally, this certificate.

In Testimony Whereof, I have hereunto set my hand and duly affixed the seal of said Court, at the City of Madison, in the said Western District of Wisconsin, this 15th day of January, in the year of our Lord one thousand nine hundred and forty-eight, and of the Independence of the United States the one hundred and seventy-second.

Edgar M. Alstad,
*Clerk, United States District Court.*

(Seal)

128 UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

February 10, 1948.

Before:

Hon. William M. Sparks, Circuit Judge.

No. 9550.

Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*
*vs.*
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
*Defendants-Appellants.*

Appeal from the District Court of the United States for the Western District of Wisconsin.

Pursuant to stipulation of counsel, it is ordered that the hearing of the "Stipulation as to the Record on Appeal," dated January 15, 1948, which constitutes a part of the record on appeal heretofore certified to this Court by the Clerk of the United States District Court for the Western District of Wisconsin, be, and the same is hereby, amended to show as parties defendants, the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Pursuant to further stipulation of counsel, it is ordered that Watson B. Miller, Commissioner of Immigration and Naturalization, be, and he is hereby, substituted as a party defendant-appellant for Ugo Carusi, Commissioner of Immigration and Naturalization Service.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

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I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of the record, filed in this office on March 9, 1948, in:

Cause No. 9550.

Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*

*vs.*

The United States of America, *et al.*,
*Defendants-Appellants,*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of March, A. D. 1949.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the seventh day of October, in the year of our Lord one thousand, nine hundred and forty-seven, and of our Independence the one hundred seventy-second.

Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*

9550 *vs.*

The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
*Defendants-Appellants.*

Appeal from the District Court of the United States for the Western District of Wisconsin.

And afterward, to-wit, on the sixteenth day of January, 1948, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellants, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

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Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*
*vs.*
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
*Defendants-Appellants.*
} 9550.

## NOTICE OF APPEARANCE.

Notice Is Hereby Given of the appearance of Charles H. Cashin, United States Attorney for the Western District of Wisconsin, and James E. Doyle, Assistant United States Attorney for the Western District of Wisconsin, as attorneys for the above named appellants.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin.*

James E. Doyle,
*Assistant United States Attorney, Western District of Wisconsin.*

Endorsed: Filed Jan. 16, 1948. Kenneth J. Carrick, Clerk.

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And afterward, to-wit, on the twentieth day of January, 1948, there was filed in the office of the Clerk of this Court an appearance for the appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

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Cause No. 9550.

Rosette Sorge Sayorgnan,
*Plaintiff-Appellee,*

*vs.*

The United States of America, *et al.*,
*Defendants-Appellants.*

The Clerk will enter my appearance as counsel for Appellee.

Carl A. Flom,
119 E. Washington Ave.,
Madison, Wis.

Endorsed: Filed Jan. 20, 1948. Kenneth J. Carrick, Clerk.

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And afterward, to-wit, on the ninth day of February, 1948, there was filed in the office of the Clerk of this Court a stipulation to correct the record, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

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| | |
|---|---|
| Rosette Sorge Savorgnan,<br>*Plaintiff-Appellee,*<br>*vs.*<br>The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,<br>*Defendants-Appellants.* | 9550. |

## STIPULATION FOR CORRECTION OF THE RECORD.

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that the heading of the "Stipulation as to the Record on Appeal," dated January 15, 1948, which constitutes a part of the record on appeal heretofore certified to this court by the Clerk of the United States District Court for the Western District of Wisconsin, be amended to show as parties defendants, the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Dated February 5, 1948.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin, Attorney for Defendants-Appellants,*
Room 241, Federal Building,
Madison 1, Wisconsin.

Dated February 5, 1948.

Carl Flom,
*Attorney for Plaintiff-Appellee,*
119 East Washington Avenue,
Madison 3, Wisconsin.

Endorsed: Filed Feb. 9, 1948. Kenneth J. Carrick, Clerk.

And on the same day, to wit, on the ninth day of February, 1948, there was filed in the office of the Clerk of this Court a stipulation for substitution of party defendant-appellant, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

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Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*
*vs.*
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
*Defendants-Appellants.*
} 9550.

## STIPULATION FOR SUBSTITUTION OF PARTY DEFENDANT-APPELLANT.

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that Watson B. Miller, Commissioner of Immigration and Naturalization, be substituted as a party defendant-appellant for Ugo Carusi, Commissioner of Immigration and Naturalization Service, and that an order for said substitution may be entered forthwith without further notice to either party.

Dated February 5, 1948.

Charles H. Cashin,
*United States Attorney, Western District of Wisconsin, Attorney for Defendants-Appellants,*
Room 241, Federal Building,
Madison 1, Wisconsin.

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Dated February 5, 1948.

Carl Flom,
*Attorney for Plaintiff-Appellee,*
119 East Washington Avenue,
Madison 3, Wisconsin.

Endorsed: Filed Feb. 9, 1948. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the fourteenth day of December, 1948, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit

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No. 9550 October Term and Session, 1948.

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Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*
*vs.*
The United States of America, Tom C. Clark, The Attorney General for the United States of America, and Watson B. Miller, Commissioner of Immigration and Naturalization Service,
*Defendants-Appellants.*

Appeal from the District Court of the United States for the Western District of Wisconsin.

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December 14, 1948.

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Before SPARKS, *Chief Judge*, KERNER, *Circuit Judge*, and SWYGERT, *District Judge*.

SWYGERT, *District Judge*. This is an appeal from a judgment in a declaratory action to determine the plaintiff's present nationality. The question presented is whether, by her acts and conduct and under the applicable statutes, the plaintiff has been expatriated. The District Court held that, since the plaintiff had "merely acquired a technical Italian citizenship", she had never lost or relinquished her American citizenship and that she is now and has been since birth a citizen of the United States. The respondents assert that this is an erroneous determination of the plaintiff's nationality status.

The plaintiff was born in Wisconsin in 1915 and continued to reside in this country until 1941. In the early

part of 1940 she became acquainted with her future husband, Allessandro Savorgnan, who was stationed in St. Louis as a member of the Italian Foreign Service. Several months after meeting Savorgnan, the plaintiff applied through the Italian consulate for citizenship in that country. She did this in order to obtain the consent of the Italian government to her intended marriage to Savorgnan. In August, 1940, the Italian government issued a Royal Decree which granted her an Italian citizenship. Following that, in November, she signed a document bearing an oath of allegiance to Italy and a formal renunciation of her American citizenship. This was done at the Italian consulate in Chicago. The plaintiff and Savorgnan were married on December 26, 1940.

After the diplomatic representatives of the Italian government had been ordered in July, 1941, to leave this country, the plaintiff accompanied her husband to Italy. She sailed July 15, 1941, using an Italian diplomatic passport.

The plaintiff continued to live in Italy throughout the war period. After the American troops entered Rome in June of 1944, she identified herself to the American military authorities and later was employed by the Allied Control Commission. When the American consulate in Rome was reopened in October, 1944, the plaintiff applied for registration as an American citizen. In January, 1945, she was notified by that office that the Department of State had approved her registration. Subsequently, she applied at the American consulate in Rome for a passport. She was told that the passport could not be issued because her registration as an American citizen was being reconsidered by the State Department. On June 1, 1945, the plaintiff was advised that since the State Department was of the opinion that she had become expatriated, a passport would not be issued. Previous to this advice, the plaintiff had learned of the serious illness of her mother. Because of that and after receiving the State Department's decision as to the issuance of a passport, she returned to the United States on November 1, 1945, through use of an Italian diplomatic passport. On February 12, 1946, the plaintiff requested the United States Commissioner of Immigration and Naturalization to correct the records of his office to show that she was an American citizen at the time of her return to this country in 1945. The request was denied, and this action for a declaratory judgment followed.

The District Court made special findings embracing the above facts. The findings also included the following: "The application and oath (for Italian citizenship) were written in Italian. Plaintiff at that time could not read, write or understand that language. She assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage. * * * At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country or establishing a permanent residence in any other country. * * * That plaintiff relied upon her husband's statement and assurance that by signing the documents . . . she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship. * * * At the time she affixed her signature thereto she had no present or fixed intention in her mind of renouncing her allegiance to this country and in fact never did intent to divest herself of American citizenship. * * * That the plaintiff did not knowingly renounce or relinquish her American citizenship."

It is contended on behalf of the respondents that the plaintiff lost her American citizenship under Sections 401 (a) and 403 (a) of the Nationality Act of 1940, Title 8, United States Code §§ 801 (a), 803 (a), by having obtained naturalization as an Italian citizen in 1940 and having taken up a residence in Italy in 1941. In the alternative, it is contended that if these provisions of the Nationality Act of 1940 do not apply, the plaintiff lost her American citizenship under Section 2 of the Act of March 2, 1907, Title 8, United States Code, (1934 Ed.) § 17, either by being naturalized in 1940 in the foreign state of Italy in conformity with its laws or by taking an oath of allegiance to that state on November 23, 1940. It is the plaintiff's view that the Act of March 2, 1907, is the applicable statute, but she says that she did not knowingly or intentionally lose her American nationality or expatriate herself under that statute or under the foregoing sections of the Nationality Act of 1940.

Before deciding whether the plaintiff has become expatriated, it is necessary to determine first which of the two statutes govern the facts in this case. This determination is necessary because the effective date of the Nationality Act of 1940 was January 13, 1941, and pertinent facts occurred both before and after that date. The plaintiff left the United States and went with her husband to

Italy in July of 1941. All of the plaintiff's other acts and conduct relating to a change of nationality occurred prior to January 13, 1941.

It would appear from a reading of the 1907 Act[1] that an American citizen could expatriate himself by either becoming naturalized in or taking an oath of allegiance to a foreign state, regardless of his removal from this country. Nothing in the statute indicates that its effectiveness depended upon whether these acts constituting expatriation occurred outside the United States or, if performed within the country, upon a subsequent change of residence to a foreign state. But the question is presented: Must the statute be read unconditionally or should it be interpreted in the context of certain legal principles which prevailed at the time of its enactment and had governed expatriation in the cases decided prior to that time? The most important of these cases are *Talbot* v. *Jansen*, 3 Dall. (3 U. S.) 133, (1795); *The Santissima Trinidad*, 7 Wheat. (20 U. S.) 283, (1822); and *Comitis* v. *Parkerson*, 56 Fed. 556 (La., 1893). All held that removal from the country, combined with a change in allegiance, was essential in accomplishing expatriation. This doctrine not only expressed the prevailing notions of the day as to what constituted expatriation, but also was a perpetuation of the historical concept of that term.

From the enactment of the 1907 Act until the adoption of the Nationality Act of 1940, the Department of State consistently maintained in its rulings and consular advices that if an American citizen became naturalized in or took an oath of allegiance to a foreign state while within this country, he was not expatriated unless and until he took up residence abroad. 3 Hackworth, *Digest of International Law*, 228-231. No court ever passed directly on this point. However, a dictum in *Ex Parte Griffin*, 237 Fed. 445 (D.C. N.Y., 1916) was to the effect that the forsaking of one's own country was a usual concomitant of expatriation.

On the other hand, the Supreme Court in the case of *Mackenzie* v. *Hare*, 239 U. S. 299 (1915) held that an American woman who married an alien while in the United

1. The Act of March 2, 1907, provides in part:
"Sec. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

States lost her citizenship under the provisions of Section 3 of the Act of March 2, 1907, even though she continued to live in this country. We take a similar view of Section 2 of the 1907 Act, and hold that a subsequent removal from the country was not necessary to effect the expatriation of a United States citizen who became naturalized in or took an oath of allegiance to a foreign state while residing within the United States. To hold otherwise would impose an unauthorized condition upon the plain and unambiguous provisions of the statute.

Having arrived at this determination, it would seem unnecessary to analyze the Nationality Act of 1940 as it pertains to the facts before us. But assuming, *arguendo*, that the previous administrative interpretation of Section 2 of the 1907 Act were valid, we believe that the provisions of the 1940 Act, as properly construed, cause the facts here to be covered by either one or the other of these statutes.

First, it would appear that the saving clauses of Section 347 of the 1940 Act, Title 8, United States Code § 747, have a direct bearing upon the instant situation. This section provides that nothing in either Chapters III or V of the Act, unless otherwise provided therein, shall be construed to affect "any act, • • • done or existing, at the time this Act shall take effect; but as to all such • • • acts, • • • the statutes • • • repealed by this Act, are hereby continued in force and effect."

Section 2 of the Act of March 2, 1907, was specifically repealed by Section 504, Chapter V, of the 1940 statute. It would appear that becoming naturalized in a foreign state in conformity with its laws is an "act" within the meaning of the above-quoted provisions of Section 347, and that, therefore, the provisions of Section 2 of the 1907 statute would continue to govern the legal consequences of a naturalization in a foreign state which occurred before the effective date of the Nationality Act of 1940, although a change to a foreign residence did not take place until after that date.

Second, Section 401 of the Nationality Act of 1940 provides in part: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: (a) Obtaining naturalization in a foreign state, . . ." And Section 403 (a) of the Act provides in part: "Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be ex-

patriated, under this section while within the United States. . . ."

These provisions do not say that one must have been naturalized in a foreign state after the Nationality Act of 1940 became effective. We think a reasonable construction permits their application to a factual situation in which an American citizen has been naturalized in a foreign state before the 1940 Act became effective, has continued in that status until and after that time, and then subsequently has taken up residence abroad. The status of becoming a naturalized citizen is the same whether its existence began before or after the enactment of the 1940 Act. This rationale is supported by *Petition of Peterson*, 33 F. Supp. 615 (D.C. Wash., 1940); *Petition of Prack*, 60 F. (2d) 171 (D.C. Pa., 1932); *In re Varat*, 1 F. Supp. 898 (D.C. N. Y., 1932) in which somewhat analogous legal problems were involved. Moreover, it cannot be contended successfully that this renders the statute retroactive, since it is well settled that a statute is not retroactive merely because it depends upon antecedent facts for its operation. *Cox* v. *Hart*, 260 U. S. 427 (1922); *Reynolds* v. *United States*, 292 U. S. 443 (1934); *United States* v. *Bradley*, 83 F. (2d) 483 (C.A. 7th, 1936).

Coming now to the vital question presented by this appeal and having in mind the interpretation we have given the Act of 1907, we think that the voluntary act of the plaintiff in obtaining Italian citizenship in 1940 effected a loss of her American citizenship. While expatriation ordinarily connotes a voluntary renunciation or abandonment of nationality and allegiance, *Perkins* v. *Edg*, 307 U. S. 325 (1939), Congress has said that one shall be deemed to have expatriated himself when he becomes naturalized in a foreign state. In other words, when an American citizen voluntarily acts in a manner inconsistent with his American citizenship by becoming a naturalized citizen of another country, his expatriation results, regardless of his subjective intent.

Applying this construction of the statute to the instant facts, the conclusion is inescapable that the plaintiff, by voluntarily becoming naturalized under Italian law, lost her American citizenship, regardless of whether she knowingly renounced or relinquished that citizenship. Conceding that her motive was solely to obtain consent of the Italian government to her marriage and that she was misinformed as to the legal consequences of her conduct, the

fact remains that she consciously and voluntarily applied for and obtained naturalization in a foreign state which, under the provisions of the statute, effected a loss of her American citizenship,

The motive for her conduct is distinguishable from her intent to act as she did. Such motive has no bearing on the determination of this question. Nor is the fact that she was misinformed or mistaken as to the legal consequences of her conduct of any significance here. One cannot avoid the force of a statute by asserting a mistaken conclusion as to its sanctions or effects. If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute.

Moreover, if (1) removal from the country were a necessary element to effect expatriation under the 1907 Act, or (2) the Nationality Act of 1940 governed the facts of this case, the plaintiff could not find succor in the fact that she did not intend to reside permanently in Italy. It is not disputed that she left this country and went to Italy in order to reside there with her husband. She testified that when she accompanied her husband abroad, her stay there was for an indefinite period of time, although she hoped to return very shortly. We thing that these facts show that the plaintiff took up a foreign residence within the requirement of Section 403 (a) of the Nationality Act of 1940, as well as any requirement of the 1907 Act.

It further appears that the United States of America is not a proper party defendant to this action, since it has not consented to be sued. For that reason the petition should have been dismissed against this defendant.

The judgment is reversed and the case is remanded with directions to dismiss the petition as against the United States and to enter judgment in conformity with this opinion.

And on the same day, to-wit, on the fourteenth day of December, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Tuesday, December 14, 1948.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Luther M. Swygert, District Judge.

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| Rosette Sorge Savorgnan, *Plaintiff-Appellee,* | | |
| 9550 | *vs.* | |
| The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Watson B. Miller, Commissioner of Immigration and Naturalization Service. | | Appeal from the District Court of the United States for the Western District of Wisconsin. |

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Wisconsin, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, and that this cause be, and the same is hereby, remanded to the said District Court with directions to dismiss the petition as against the United States and to enter judgment in conformity with the opinion of this Court filed this day.

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And afterward, to-wit, on the thirtieth day of December, 1948, there was filed in the office of the Clerk of this Court a petition for rehearing, which said petition is not copied here.

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And afterward, to-wit, on the eighth day of January, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

January 8, 1949

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Luther M. Swygert, District Judge.

| | |
|---|---|
| Rosette Sorge Savorgnan, *Plaintiff-Appellee,* *vs.* The United States of America, Tom C. Clark, the Attorney General for the United States of America and Watson B. Miller, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.* | Appeal from the United States District Court for the Western District of Wisconsin. |

9550

It is ordered by the Court that the petition for rehearing of this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

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I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of papers filed and proceedings had (excepting motions and orders relating to briefs of counsel, briefs and the petition for rehearing) in

Cause No. 9550

Rosette Sorge Savorgnan,
*Plaintiff-Appellee,*

*vs.*

The United States of America, *et al.*,
*Defendants-Appellants,*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of March, A. D. 1949.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

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SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.